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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 03–072–1]

Tuberculosis in Cattle and Bison; State and Zone Designations; Delay of Compliance Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of compliance date.

SUMMARY: When we amended the bovine tuberculosis regulations to classify the States of Texas, California, and New Mexico as modified accredited advanced, we delayed the date for compliance with certain identification and certification requirements in those regulations until September 30, 2003. In this action, we are further delaying the date for compliance until March 30, 2004.

DATES: The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the States of Texas, California, and New Mexico is March 30, 2004. (See ''Delay in Compliance'' under **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

Under the regulations in § 77.10, cattle and bison that originate in a modified accredited advanced State or zone and that are not known to be infected with or exposed to tuberculosis must meet certain identification, certification, and testing requirements prior to being moved interstate.

Delay in Compliance

We recently published several interim rules that amended the regulations by changing the classification of the States of Texas, California, and New Mexico from accredited free to modified accredited advanced and that delayed compliance with certain provisions of § 77.10 until September 30, 2003. The interim rule that amended the classification of Texas was effective June 3, 2002, and published in the **Federal Register** on June 6, 2002 (67 FR 38841–38844, Docket No. 02–021–1); in a document published in the **Federal Register** on December 31, 2002, the compliance date for certain provisions of § 77.10 was extended from January 1, 2003, to September 30, 2003 (67 FR 79836–79837, Docket No. 02–021–3). The interim rule that amended the classification of California was effective and published in the **Federal Register** on April 25, 2003 (68 FR 20333–20336, Docket No. 03–005–1). The compliance date for certain provisions of § 77.10 was September 30, 2003. The interim rule that amended the classification of New Mexico was effective and published in the **Federal Register** on July 24, 2003 (68 FR 43618–43621, Docket No. 03–044–1). Again, the compliance date for certain provisions of § 77.10 was September 30, 2003.

The specific provisions of § 77.10 that have a delayed compliance date are:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers moving to any destination (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

Initially, we delayed the compliance with these requirements for the State of Texas for two reasons. First, the size of the cattle industry in Texas necessitated additional time to implement the identification requirements of the regulations. Second, some cattle that had begun moving through channels prior to the change in Texas' tuberculosis status would not have been identified at their premises of origin. In addition, we subsequently delayed the compliance date in response to comments received on the interim rule that classified Texas as modified accredited advanced and that also solicited comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program. The compliance date was delayed for California and New Mexico to provide equitable treatment for producers in California and New Mexico.

Based on the comments that we received on the interim rule for Texas, it appears that the tuberculosis risk associated with the movement of nonbreeding cattle from modified accredited advanced States or zones through feeder channels to slaughter is low and that identification requirements for certain cattle destined for slaughter may be unnecessary. Therefore, we are considering proposing several changes to the regulations as a result of those comments and are further delaying the date for compliance with the identification and certification requirements of § 77.10(b) and (d) for nonbreeding cattle until March 30, 2004. As stated in the interim rule for Texas, this delay in compliance does not apply to the movement of cattle from the former modified accredited

advanced zone in El Paso and Hudspeth Counties, TX.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 5th day of August 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–20248 Filed 8–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11346; Amendment No. 25–110]

RIN 2120–AH38

Lower Deck Service Compartments on Transport Category Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to the final rule published in the **Federal Register** on June 19, 2003. That rule amended the airworthiness standards for transport category airplanes concerning lower deck service compartments.

EFFECTIVE DATE: This correction is effective on August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, telephone (425) 227–2194.

SUPPLEMENTARY INFORMATION:

Correction

■ In the final rule FR Doc. 03–15532, published on June 19, 2003, (68 FR 36880), make the following corrections:

■ 1. On page 36880, in column 1 in the heading section, beginning on line 4, correct ''Amendment No. 110'' to read ''Amendment No. 25–110''.

■ 2. On page 36883, in the third column, on the first line, correct the word ''surface'' to read ''service.''

Issued in Washington, DC on August 4, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–20283 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–357–AD; Amendment 39–13253; AD 2003–16–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires modifying the overhead instrument lighting by relocating the dimmer control unit and revising the wire routing. This action is necessary to prevent overheating and internal component failure of the dimmer control unit of the overhead instrument lighting, which could result in smoke and/or fire in the flight compartment. This action is intended to address the identified unsafe condition.

DATES: Effective September 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on May 15, 2002 (67 FR 34635). That action proposed to require modifying the overhead instrument lighting by relocating the dimmer control unit and revising the wire routing.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the comments received.

One commenter states no objection to the proposed AD.

Request To Ensure That Relocation of Switch Would Eliminate Unsafe Condition

Two commenters express concern about whether relocating the dimmer control unit for the overhead instrument light from its existing location to a better-ventilated area will adequately address the unsafe condition. The commenters note that the proposed AD states that inadequate heat dissipation in the existing location contributed to the overheating and internal component failure of the dimmer control unit. Both commenters question whether the proposed AD is addressing the root cause of the smoke in the flight deck—*i.e.*, the failure of the internal components in the dimmer control unit. The commenters noted that a related AD, AD 98–24–02, amendment 39–10889 (63 FR 63402, November 13, 1998), requires a modification of the dimmer control unit to replace the capacitor in the dimmer control unit with a new capacitor having a higher temperature rating. One of the commenters notes, however, that, even after accomplishment of AD 98–24–02, several operators have reported events involving smoke in the flight deck and failure of the new capacitors. Both commenters question whether adequate research has been done to ensure that relocating the dimmer control unit will preclude the overheating condition that can lead to smoke in the flight deck. One of the commenters states that the airplane manufacturer has informed it that no on-aircraft temperature readings were taken either before or after relocating the dimmer control unit. That commenter requests that such on-aircraft testing be accomplished before the FAA proceeds with this rulemaking action.

We infer that the commenters want us to postpone the proposed rulemaking until further testing and analysis are done to ensure that the proposed action

will address the unsafe condition. We concur with the commenters' request and have delayed issuance of this final rule until now. Testing was performed on a Model MD–11 airplane to measure the temperature of the dimmer control unit in the existing and new locations. The dimmer control unit had been modified to incorporate the new capacitor. Internal and external temperatures of the dimmer control unit, including temperature of the new capacitor, were recorded every 10 seconds for an hour and forty minutes. Analysis of the test results revealed that the capacitor in the dimmer control unit was heated to approximately 90 percent of its temperature rating in its old location versus approximately 60 percent of its temperature rating in the new location. These results support the hypothesis that the lack of heat dissipation in the existing location of the dimmer control unit contributes to the overheating condition and capacitor failure; moving the dimmer control unit to the new location should correct this unsafe condition. No change to the final rule is necessary in this regard.

Another commenter states that it does not agree that relocating the dimmer control unit will be effective in preventing the overheating condition. The commenter states that increased ventilation may ''fan the flames.'' The commenter states that it has developed and tested a modified model of the dimmer control unit, for which the FAA has granted a Parts Manufacturing Approval (PMA). The commenter states that redesign of the circuitry in this modification eliminates the possibility of capacitor overheating. The commenter requests that we consider its modified dimmer control unit as a proposed corrective action.

We do not concur. Testing has shown that, rather than ''fanning the flames,'' relocating the dimmer control unit to a better ventilated area will ensure that airflow is increased and heat is dissipated more effectively, which will alleviate the overheating condition. The testing described previously supports this action. Further, we recognize that, in order to obtain a PMA to replace or modify a type certificated product, a part is required to meet the airworthiness requirements of the Federal Aviation Regulations (FARs) applicable to the airplane model on which the part is to be installed. The part approved by the PMA must have been subjected to all necessary tests and computations as one method of showing compliance with the applicable airworthiness requirements. However, the airworthiness requirements approval for installing a part approved by a PMA may not address unsafe conditions that are likely to be encountered in service operations. In addition, we require the holder of the type certificate for the subject airplane model to make the necessary design changes to correct an unsafe condition by submitting appropriate design changes for approval and, upon the approval of the design changes, make available the descriptive data covering the changes to all operators of airplanes previously certificated under the type certificate. For these reasons, we cannot mandate a part approved by a third-party PMA to correct an unsafe condition. However, per the provisions of paragraph (b) of this AD, an operator may submit a request for approval of the installation of a modified dimmer control unit, such as the one to which the commenter refers, as an alternative method of compliance (AMOC) with this AD. The request should include adequate data to justify that installation of the modified dimmer control unit will provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Consider Parallel Rulemaking for Other Airplanes and Other Areas

One commenter is concerned that the overheating condition and capacitor failures in the dimmer control unit may also occur on other airplane models, such as McDonnell Douglas Model MD–10 and DC–10 airplanes, or on other dimmer control units installed in locations other than the overhead area. The commenter notes that capacitor failures within the dimmer control units on other airplane models have been observed and tracked for identification of the cause. The commenter provides data on these other occurrences.

We have reviewed the data provided by the commenter. These data reveal that capacitor failures in the overhead dimmer control unit on other airplanes do not represent systemic failures, and capacitor failures at other locations on the airplane are not related to overheating and are not systemic failures. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $101 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $26,714, or $361 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–01 McDonnell Douglas: Amendment 39–13253. Docket 2001–NM–357–AD.

Applicability: Model MD–11 and –11F airplanes, certificated in any category, as listed in McDonnell Douglas Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating and internal component failure of the dimmer control unit of the overhead instrument lighting, which could result in smoke and/or fire in the flight compartment, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the overhead instrument lighting by relocating the dimmer control unit and revising the wire routing, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 12, 2003.

Issued in Renton, Washington, on July 29, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19681 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–144–AD; Amendment 39–13254; AD 2003–16–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas transport category airplanes listed above. This action requires inspecting the fuel boost/transfer pumps or reviewing the airplane maintenance records to determine the part number of the fuel boost/transfer pumps, and follow-on actions if necessary. This action is necessary to prevent heated localized temperatures within the fuel boost/transfer pumps due to frictional heating, which could result in a potential source of ignition in a fuel tank and consequent fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective August 25, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

Comments for inclusion in the Rules Docket must be received on or before October 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–144–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received two reports of evidence of heat damage to the reprime impeller area found during a visual inspection of the fuel pumps on certain Boeing Model 747 series airplanes. The heat discoloration of the damaged parts indicates that the fuel pumps were exposed to high temperatures due to frictional heating between pump components. Such conditions within the pumps can create a potential ignition source and auto-ignition of vapors could occur, which could result in fire or explosion in a fuel tank.

A review of design data by the manufacturer revealed that a fuel boost/transfer pump having Hydro-Aire part number (P/N) 60–847–1A has less internal fuel retention capability than other fuel boost/transfer pumps. It was determined that the smaller fuel retention capability of the Hydro-Aire fuel pumps may intensify the frictional heating. Replacement of the Hydro-Aire fuel pumps with the improved pumps will minimize the risk of a potential ignition source in the fuel tank.

Similar Models

The fuel boost/transfer pumps of the reprime impeller area of the Hydro-Aire P/N 60–847–1A on McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes are similar to those on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 series airplanes, and Model 757 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA has previously issued the following two ADs that concern the fuel boost/transfer pumps on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 series airplanes, and Model 757 series airplanes:

1. AD 2002–24–51, amendment 39–12992 (68 FR 10, January 2, 2003), applicable all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 series airplanes, and Model 757 series airplanes, requires revising the Airplane Flight Manual (AFM) to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and, for certain airplanes, to prohibit the use of the horizontal stabilizer fuel tank and certain center auxiliary fuel tanks.

2. AD 2002–24–52, amendment 39–12993 (68 FR 14, January 2, 2003), applicable to all Boeing Model 747–400, –400D, and –400F series airplanes, requires revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. That AD also removes the reference to placards that was specified in the operating limiations required by AD 2002–24–51.

This AD will not affect the current requirements of any of those previously issued ADs.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) DC10–28A241, dated April 24, 2003, which describes, among other things, the following:

- Condition 1—Procedures for reviewing the airplane maintenance records to determine if any fuel boost/transfer pump having P/N 60–847–1A is installed. If the records show that none of the pumps have P/N 60–847–1A, no further action is necessary.
- Condition 2—Procedures for a visual inspection to determine if a pump having P/N 60–847–1A is installed. If the inspection shows that no pump having P/N 60–847–1A is installed, no further action is necessary.
- Condition 3, Option 1a.—Procedures to replace the pump with a new pump, if the records or visual inspection verify that a pump having P/N 60–847–1A is installed and replacement pumps are available.
- Condition 3, Option 2a.—Procedures to deactivate any pump having P/N 60–847–1A if replacement pumps are not available.
- Condition 3, Option 2b.—Procedures to relocate pumps having P/N 60–847–1A, if replacement pumps are not available.

In addition, Appendix A, Recommended Operating Limitations, of the ASB describes certain operating procedures, limitations, and related maintenance actions intended to prevent fuel vapors from coming into contact with a possible ignition source in the fuel tanks.

The accomplishment of certain actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of certain actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and the Service Bulletin

The service bulletin recommends a review of the airplane maintenance records to determine if a certain P/N for the fuel boost/transfer pump is installed. This AD requires a general visual inspection to determine the P/N. In lieu of the inspection, a review of the airplane maintenance records is acceptable if the P/N of the pump can be positively determined from that review.

While Option 2.b. of the service bulletin recommends replacement of all relocated pumps within 18 months after issue date of the service bulletin, this AD requires only the relocation of the pumps, or deactivation of the pumps having P/N 60–847–1A per the McDonnell Douglas DC–10 Minimum Equipment List.

Appendix A of the service bulletin contains operating limitations and related maintenance actions for fuel boost/transfer pumps having P/N 60–847–1A that are installed in all locations except those boost pumps located in the aft position of the main tanks. This AD does not specify implementation of the operating limitations and related maintenance actions for boost pumps in the aft position of the main tanks since these pumps are always covered with fuel during takeoff, which prevents heated localized temperatures from occurring within the fuel boost/transfer pump due to frictional heating.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–144–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–02 McDonnell Douglas: Amendment 39–13254. Docket 2003–NM–144–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin (ASB) DC10–28A241, dated April 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent heated localized temperatures within the fuel boost/transfer pumps due to frictional heating, which could result in a potential source of ignition in a fuel tank and consequent fire or explosion, accomplish the following:

Inspection/Records Review/Follow-on Actions

(a) Within 90 days after the effective date of this AD: Do a general visual inspection of the fuel boost/transfer pumps to determine if Hydro-Aire part number (P/N) 60–847–1A is installed. Instead of inspecting the pumps, a review of the airplane maintenance records is acceptable if the P/N of the pumps can be positively determined from that review. Do the actions per the Work Instructions of Boeing Alert Service Bulletin DC10–28A241, dated April 24, 2003.

(1) If the inspection and/or records verify that no pump having P/N 60–847–1A is installed, no further action is required by this paragraph.

(2) If the inspection and/or records verify that a pump having P/N 60–847–1A is installed, do the applicable actions specified in paragraph (b) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(b) With the exception of fuel boost pumps having P/N 60–847–1A that are located in the aft position of the main tanks: Do the applicable actions specified in paragraph (b)(1) or (b)(2) of this AD, at the applicable times specified, per the Work Instructions of Boeing Alert Service Bulletin DC10–28A241, dated April 24, 2003.

(1) If replacement pumps having either P/N 60–847–2 or P/N 60–847–3 are available, within 90 days after the effective date of this AD, replace the pumps per Option 1 of Condition 3 of the ASB. With the exception of paragraph (c) of this AD, this constitutes terminating action for the requirements of this AD.

(2) If replacement pumps are not available, do the actions specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD within 90 days after the effective date of this AD.

(i) Deactivate pumps having P/N 60–847–1A per the McDonnell Douglas DC–10 Minimum Equipment List (MEL) and replace the pump with a pump having P/N 60–847–2 or 60–847–3 within the time limitations specified in the MEL, per Option 2a. of Condition 3 of the ASB.

(ii) Relocate the pumps per Option 2b. of Condition 3 of the ASB. Or,

(iii) Insert Appendix A of the ASB into the Limitations Section of the Airplane Flight Manual.

Note 2: Fuel boost pumps having P/N 60–847–1A that are located in the aft position of the main tanks are always covered with fuel during takeoff; therefore, operating the airplane per the operations limitations specified in Appendix A of Boeing Alert Service Bulletin DC10–28A241, dated April 24, 2003, is unnecessary.

Parts Installation

(c) As of the effective date of this AD, no person shall replace a fuel boost/transfer pump on any airplane with a fuel boost/transfer pump having Hydro-Aire P/N 60–847–1A, unless that pump is installed in the aft position of the main tanks. A fuel boost/transfer pump having Hydro-Aire P/N 60–847–1A that is removed for inspection per paragraph (a) of this AD may be reinstalled until paragraph (b) of this AD is complied with.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done per Boeing Alert Service Bulletin DC10–28A241, dated April 24, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 25, 2003.

Issued in Renton, Washington, on July 29, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19682 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–41–AD; Amendment 39–13258; AD 2003–16–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. This amendment requires removal and replacement of protective coating of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. This amendment is prompted by reports from operators of cracks observed in JT8D engine steel HPC disks. We are issuing this AD to prevent fracture of the 7th and 9th through 12th stage HPC disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane.

DATES: Effective September 12, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to PW JT8D–209, –217, –217A, –217C, and –219 series turbofan engines was published in the **Federal Register** on March 25, 2003 (68 FR 14351). That action proposed to require removal and replacement of protective coating of the 7th and 9th through 12th stage HPC disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required in accordance with PW alert service bulletin (ASB) JT8D A6435, Revision 1, dated March 7, 2003.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Disk Tracking

One commenter requests that the disks inspected using PW ASB JT8D 6435, Revision 1, dated March 7, 2003, as well as all new disks, be tracked by the engine release date recorded on FAA 337 form or equivalent rather than per individual disk inspection dates. The commenter feels that this would significantly reduce the burden on airline records departments, especially for large operators, because the time between the disk inspection and the engine release date is typically not more than a few weeks.

The FAA does not agree. There is no way to ensure that the time between the disk inspection and the engine release date will always be a short or controlled amount of time. Some operators or repair facilities may elect to store disks in their inventory for long periods of time. Unless these disks are preserved using instructions in the ASB, the time in storage must be counted in the accumulation of time to the next inspection because the corrosion protective coatings begin to degrade while in storage without proper preservation. However, if an operator can show that their particular operation will always result in short controlled times between inspection and installation and can demonstrate that an acceptable level of safety is maintained, they may apply for relief in accordance with paragraph (d) of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–16–05 Pratt & Whitney: Amendment 39–13258. Docket No. 2002–NE–41–AD.

Applicability: This airworthiness directive (AD) applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas MD–80 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

To prevent fracture of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane, do the following:

(a) Perform initial and repetitive inspections of 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs for corrosion pits and cracks after stripping the protective coating in accordance with the intervals specified in the compliance section and procedures specified in the accomplishment instructions of PW alert service bulletin (ASB) JT8D A6435, Revision 1, dated March 7, 2003.

(b) Before further flight, replace 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs found with corrosion pits or cracks beyond serviceable limits as defined by PW ASB JT8D A6435, Revision 1, dated March 7, 2003.

(c) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB JT8D A6435, Revision 1, dated March 7, 2003, refers to the release date of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with Pratt & Whitney alert service bulletin JT8D A6435, Revision 1, dated March 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 12, 2003.

Issued in Burlington, Massachusetts, on July 30, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19828 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–08–AD; Amendment 39–13256; AD 2003–16–03]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Turbomeca Arriel 1A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, and 1 D1 turboshaft engines. That AD currently requires repetitive checks for engine rubbing noise during gas generator rundown following engine shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. In addition, the AD 95–11–01 requires installation of modification TU 202 or TU 197 as terminating action to the repetitive checks. This amendment adds additional engine models to the applicability section, eliminates the installation of modification TU 197 as a terminating action to the repetitive checks, requires additional inspections for engines that have modification TU 197 installed, and requires the replacement of modifications TU 76 and TU 197 with modification TU 202, as a terminating action to the repetitive checks and inspections. This amendment is prompted by a report of an in-flight engine shutdown on an engine that had modification TU 197 installed, and the need to update the modification standard on certain engine models. We are issuing this AD to prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage turbine nozzle guide vanes, which could result in complete engine failure and damage to the helicopter.

DATES: Effective September 12, 2003. The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–11–01, Amendment 39–9235 (60 FR 27023, May 22, 1995), which is applicable to Turbomeca Arriel 1A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, and 1 D1 turboshaft engines was published in the **Federal Register** on March 10, 2003 (68 FR 11342). That action proposed to add additional engine models to the applicability section, to eliminate the installation of modification TU 197 as a terminating action to the repetitive checks, to require additional inspections for engines that have modification TU 197 installed, and to require the replacement of modifications TU 76 and TU 197 with modification TU 202, as a terminating action to the repetitive checks and inspections in accordance with Turbomeca Alert Service Bulletin (ASB) No. A292 72 0150, Update 6, dated September 4, 2000, and Turbomeca ASB No. A292 72 0212, Update 5, dated August 8, 2001. Information that describes procedures for checking for unusual noise during gas generator rundown on engine shutdown and after the last flight of the day may be found in SB No. 292 72 0181, Update 3, dated September 15, 1995.

Addition of Helicopter Model to the Applicability

Since the publication of the NPRM supercedure, 68 FR 11342, dated March 10, 2003, we have learned that these turboshaft engines are also installed on certain Sikorsky S–76 A helicopters. The Sikorsky S–76 A has also been added to the applicability.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Correction in Note 1 to Alternative Methods of Compliance Paragraph Reference

The reference in Note 1 to the alternative methods of compliance paragraph in the regulatory language section is corrected from (k) to (j) in this AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–9235 (60 FR 27023, May 22, 1995) and by adding a new airworthiness directive, Amendment 39–13256, to read as follows:

2003–16–03 Turbomeca: Amendment 39–13256. Docket No. 94–ANE–08–AD. Supersedes AD 95–11–01, Amendment 39–9235

Applicability: This airworthiness directive (AD) applies to Turbomeca turboshaft engine models Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 that have not incorporated modification TU 202. These engines are installed on but not limited to Eurocopter AS–350 B, B1, and B2; SA–365 C, C2, N, N1, and N2; MBB–BK 117 C–1 and C–2, certain Sikorsky S–76 A, certain Sikorsky S–76 C, and Agusta A109 K2 helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

To prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage nozzle guide vanes, which could result in complete engine failure and damage to the helicopter, do the following:

(a) For Turbomeca Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 turboshaft engines that have incorporated modification TU 202, no further action is required.

(b) For Turbomeca Arriel turboshaft engines Models 1 B, 1 D, or 1 D1 that have modification TU 76 or TU 197 installed, before further flight after the effective date of this AD, replace modification TU 76 or TU 197 with modification TU 202 in accordance with 2.B.(1) through 2.C.(2) of Arriel 1 Alert Service Bulletin (ASB) No. A292 72 0150, Update 6, dated September 4, 2000.

Daily Inspection for Engine Rubbing and Free Rotation

(c) For Arriel 1 A, 1 A1, 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 engines with modification TU 197 installed, perform the following daily checks:

(1) After the last flight of the day or after a ventilation (maximum of 5 seconds), immediately after engine stopping, listen for unusual engine rubbing noise during the gas generator rundown, and

(2) During the check after the last flight of the day, when the T4 temperature is below 150°C (302°F), perform a ventilation (5 seconds maximum) during gas generator rundown or check for free rotation of the gas generator and unusual noise by turning the compressor by hand.

(3) If any rubbing noise is heard and the source of the noise cannot be identified, replace module M03.

Initial Borescope Inspection

(d) For Arriel 1 A, 1 A1, 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 engines with modification TU 197 installed, do the following:

(1) Perform initial borescope inspections for cracks of the second stage nozzle guide vanes (NGV2) in accordance with 2.B.(a) through 2.B.(c)(2) of Turbomeca ASB No. A292 72 0212, Update 5, dated August 8, 2001, and the schedules specified in the following Table 1:

TABLE 1.—INITIAL BORESCOPE INSPECTION

Number of cycles-since-new or overhaul (CSN) on the effective date of this AD.	Initial inspection
(1) Modules M03 with fewer than 1,000 CSN.	Before accumulating 1,100 CSN.
(2) Modules M03 with 1,000 CSN or greater.	Within 100 additional cycles-in-service (CIS) after the effective date of this AD.

(2) If the 2nd stage nozzle guide vanes do not meet the acceptance criteria specified in 2.B.(c)(2) of ASB A292 72 0212, Update 5, dated August 8, 2001, replace module M03.

First Repetitive Borescope Inspection

(e) Thereafter, for Arriel 1 A, 1 A1, 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 engines with modification TU 197 installed, do the following:

(1) Perform the first repetitive borescope inspection for cracks of the NGV2 in accordance with 2.B.(a) through 2.(c)(2) of Turbomeca ASB No. A292 72 0212, Revision 5, dated August 8, 2001 and the schedules specified in the following Table 2:

TABLE 2.—REPETITIVE BORESCOPE INSPECTIONS

If Module M03 has already been checked	Then repeat inspection
(1) Once, before 900 CSN.	Before 1,100 CSN and then between 1,900 and 2,100 CSN.
(2) Twice, before 900 CSN without propagation of cracks recorded between the first and second check.	Before 1,500 CSN.
(3) Twice, before 900 CSN with propagation of cracks recorded between the first and second check.	Before 1,100 CSN and then between 1,900 and 2,100 CSN.
(4) Once, after 900 CSN.	Between 1,900 and 2,100 CSN.

(2) If the 2nd stage nozzle guide vanes do not meet the acceptance criteria specified in 2.B.(c)(2) of ASB A292 72 0212, Update 5, dated August 8, 2001, replace module M03.

Subsequent Repetitive Borescope Inspection

(f) Thereafter, for Arriel 1 A, 1 A1, 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 engines with modification TU 197 installed, do the following:

(1) Repeat the borescope inspection of the NGV2 in accordance with 2.B.(a) through 2.B.(c)(2) of Turbomeca ASB No. A292 72 0212, Update 5, dated August 8, 2001 at intervals not to exceed 2,100 cycles-since-last-inspection (CSLI).

(2) If the 2nd stage nozzle guide vanes do not meet the acceptance criteria specified in 2.B.(c)(2) of ASB A292 72 0212, Update 5, dated August 8, 2001, replace module M03.

Replacement of Modification TU 197

(g) For 1 A, 1 A1, 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1K, 1 K1, 1 S, and 1 S1 engines that have modification TU 197 installed, install the improved 2nd stage nozzle guide vanes, modification TU 202 at next shop visit after the effective date of this AD, but not later than December 31, 2006, in accordance with 2.B. through 2.C. of Arriel 1 ASB No. A292 72 0150, Update No. 6, dated September 4, 2000.

Terminating Action

(h) Installation of the improved 2nd stage nozzle guide vane, modification TU202, constitutes terminating action to the checks and inspections required by paragraphs (c)(1), (c)(2), and (d)(1) through (d)(3) of this AD.

(i) The checks required by paragraph (c)(1) and (c)(2) of this AD may be performed by the pilot holding at least a private pilot certificate as an exception to the requirements of part 43 of the Federal Aviation Regulations (14 CFR part 43). The checks must be recorded in accordance with §§ 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR 43.9 and 14 CFR 91.417(a)(2)(v)), and the records must be maintained as required by the applicable Federal Aviation Regulation.

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(l) The actions must be done in accordance with the following Turbomeca alert service bulletins:

Document No.	Pages	Revision	Date
A292 72 0150	All	6	September 4, 2000.
Total pages: 9			
A292 72 0212	All	5	August 8, 2001.
Total pages: 12			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in DGAC airworthiness directive DGAC 98–311 (A) R1, dated October 7, 1998.

Effective Date

(m) This amendment becomes effective on September 12, 2003.

Issued in Burlington, Massachusetts, on July 29, 2003.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19836 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–33–AD; Amendment 39–13255; AD 2003–14–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2003–14–51, which was sent previously to all known U.S. owners and operators of the specified MD Helicopters, Inc. (MDHI) helicopters by individual letters. This AD requires checking and inspecting each main rotor blade retention bolt (bolt) and replacing the bolt with an airworthy bolt if necessary. The actions specified by this AD are intended to prevent failure of a bolt, loss of main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective August 25, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–14–51, issued on July 2, 2003, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

Comments for inclusion in the Rules Docket must be received on or before October 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *http://www.mdhelicopters.com.* This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 2960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On June 20, 2003, the FAA issued an Emergency AD (EAD) 2003–13–51 for the specified MDHI model helicopters that contained interim actions until certain investigations were complete. That EAD reuqires certain checks and inspections of bolt, part number (P/N) 900R3100001–103, replacing the bolt with an airworthy bolt if necessary. That action was prompted by two instances of failure of a bolt.

Since the issuance of that EAD, we have new information that indicates that the pilot check and torque inspection required by the EAD can be limited to certain bolts. We also determined that disassembly and a more detailed inspection of the condition of each bolt is necessary. On July 2, 2003, we superseded EAD 2003–13–51 by issuing EAD 2003–14–51, which requires certain checks and inspections of certain bolts and replacing any bolt with an airworthy bolt if necessary. The EAD also provides terminating action for the requirements of the EAD.

The FAA has reviewed MD Helicopters Service Bulletin SB900–092R1, dated June 30, 2003 (SB), which describes procedures for disassembling and inspecting the bolts.

Since the unsafe condition described is likely to exist or develop on other MDHI helicopters of the same type design, the FAA issued EAD 2003–14–51 to prevent failure of a bolt, loss of a main rotor blade, and subsequent loss of control of the helicopter. The AD requires the following:

- Before further flight, remove, inspect, and reinstall each bolt, unless accomplished previously. If segments do not move freely or a crack is found, replace the bolt with an airworthy bolt before further flight.
- Thereafter, until the terminating action is accomplished, before each start of the engines for each bolt with 400 or more hours TIS, do a visual check. A pilot may perform the visual check.
- If a bolt has shifted upward or if there is no gap between the thrust washer and retainer (the gap indicates that the O ring is intact), before further flight, inspect the bolt.
- At specified intervals, until you accomplish the terminating action, for bolts with 400 or more hours TIS, do a cam lever force inspection on each bolt, without removing the bolt.
- Within 30 days, for bolts with 400 or more hours TIS, disassemble, inspect, and reinstall each airworthy bolt. If a crack, fretting, or corrosion is found, replace the bolt with an airworthy bolt before further flight.
- Before accumulating 400 hours TIS, for each bolt with less than 400 hours TIS, disassemble, inspect, and reinstall each airworthy bolt. If a crack, fretting, or corrosion is found, replace the bolt with an airworthy bolt before further flight.

Doing the required disassembly and inspections of each bolt, P/N 900R3100001–103, constitutes terminating action for the requirements of this AD. The actions must be accomplished in accordance with the service bulletin described previously.

An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual checks required by paragraph (b) of this AD and must enter compliance into the aircraft maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)). A pilot may perform this check because it is a visual check for a gap or movement of the bolt and can be performed equally well by a pilot or a mechanic.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, removing, inspecting, and reinstalling each bolt at the specified time intervals, and replacing any unairworthy bolt with an airworthy bolt is required before further flight and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 2, 2003, to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal**

Register as an amendment to 14 CFR 39.13 to make it effective to all persons.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002) which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 32 helicopters of U.S. registry, and the inspections and replacement of a bolt will take approximately 13 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $800 per bolt (2 bolts per blade and 5 blades) per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $283,040, assuming all bolts are replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–33–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–14–51 MD Helicopters, Inc: Amendment 39–13255. Docket No. 2003–SW–33–AD. Supersedes Emergency AD 2003–13–51, Docket No. 2003–SW–27–AD.

Applicability: Model MD900 helicopters, serial number 900–00008 through 900–00114, with main rotor blade retention bolt (bolt), part number 900R3100001–103, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a bolt, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove, inspect, and reinstall the bolt in accordance with the Accomplishment Instructions, paragraph 2.B., of MD Helicopters Service Bulletin SB900–092 R1, dated June 30, 2003 (SB). If segments do not move freely or a crack is found, replace the bolt with an airworthy bolt before further flight.

(b) Thereafter, before each start of the engines, for each bolt with 400 or more hours time-in-service (TIS) or if the hours TIS is not available for each bolt, visually check each bolt as follows:

(1) Check that the position of each installed bolt has not shifted upward.

(2) Check for a gap between the thrust washer and retainer.

(3) An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual check required by this paragraph and must enter compliance into the aircraft maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)).

(c) If a bolt has shifted upward or if there is no gap between the thrust washer and retainer (the gap indicates that the O ring is intact), before further flight, inspect the bolt in accordance with the Accomplishment Instructions, paragraph 2.B., of the SB.

(d) After accomplishing paragraph (a) of this AD, thereafter, at intervals not to exceed 6 hours TIS, for bolts with 400 or more hours TIS, do a cam lever force inspection on each bolt, without removing the bolt, in accordance with the Accomplishment Instructions, paragraphs 2.B.(3) and 2.B.(6) of the SB.

(e) Within 30 days, for bolts with 400 or more hours TIS, disassemble, inspect, and reinstall each airworthy bolt in accordance with the Accomplishment Instructions, paragraph 2.C. of the SB, except you are not required to report inspection results to MD Helicopters, Inc. If a crack, fretting, or corrosion is found, replace the bolt with an airworthy bolt before further flight.

(f) Before accumulating 400 hours TIS, for bolts with less than 400 hours TIS, disassemble, inspect, and reinstall each airworthy bolt in accordance with the Accomplishment Instructions, paragraph 2.C. of the SB, except you are not required to report inspection results to MD Helicopters, Inc. If a crack, fretting, or corrosion is found, replace the bolt with an airworthy bolt before further flight.

(g) Accomplishing paragraphs (e) or (f) of this AD constitutes terminating action for all of the requirements of this AD.

(h) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

(i) The inspections and replacement of a bolt shall be done in accordance with MD Helicopters Service Bulletin SB900–092 R1, dated June 30, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *http://www.mdhelicopters.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on August 25, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–14–51, issued July 2, 2003, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on July 29, 2003.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–19976 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–232–AD; Amendment 39–13259; AD 2003–16–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6–45 or CF6–50 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes equipped with General Electric CF6–45 and CF6–50 series engines. This amendment requires an inspection to detect chafing of the fuel line or incorrect clearance between the fuel line and pneumatic duct insulation blanket; a fuel leak check and strut drain test; corrective action if necessary; replacement of the outboard strut fuel line coupling O-rings and retaining rings with new parts; replacement of the pneumatic duct boot with a new part; and, for certain airplanes, installation of a flame arrestor and drain line entry screens. The actions specified by this AD are intended to prevent leaking fuel line couplings, chafed fuel lines, restricted or clogged strut drain lines, migrating fluids or vapors toward ignition sources, and flashback of external flame into the strut; these conditions could result in an uncontained engine strut fire. This action is intended to address the identified unsafe condition.

DATES: Effective September 12, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes equipped with General Electric CF6–45 and CF6–50 series engines was published in the **Federal Register** on January 29, 2003 (68 FR 4398). That action proposed to require an inspection to detect chafing of the fuel line or incorrect clearance between the fuel line and pneumatic duct insulation blanket; a fuel leak check and strut drain test; corrective action if necessary; replacement of the outboard strut fuel line coupling O-rings and retaining rings with new parts; replacement of the pneumatic duct boot with a new part; and, for certain airplanes, installation of a flame arrestor and drain line entry screens.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Correct Service Bulletin Citations

Two commenters state that there are typographical errors in two of the service bulletin citations specified in the section in the preamble titled ''Explanation of Relevant Service Information.'' The first commenter states that the reference to Boeing Service Bulletin 747–28–2155 should be 747–71–2155. The second commenter states that the reference to Boeing Service Bulletin 747–36–2122 should be 747–54–2122. While the FAA agrees with these corrections and acknowledges that the service bulletin citations were incorrect in the proposed AD, that section of the preamble is not restated in the final rule.

Request To Clarify Certain Paragraphs

One commenter asks that paragraph (e) of the proposed AD be changed, for clarification, to add that the fiberglass fabric pneumatic duct boot is replaced with a new, NOMEX fabric duct boot. We agree and have added the language requested by the commenter to paragraph (e) of this final rule.

The same commenter asks that paragraphs (b) and (f) of the proposed AD be changed, for clarification, to add the term ''outboard'' to define which strut is affected by those paragraphs. We agree and have added the term requested by the commenter to paragraphs (b) and (f) of this final rule.

Replace Pneumatic Boot Only if Damage Found

One commenter states that it performs the repetitive detailed visual inspections of the pneumatic duct boot at every 1C-check, with replacement of the duct boot if it is damaged. The commenter asks that it be allowed to continue to perform the inspections at every 1C-check, and replace the duct boot only if damaged, instead of replacing the duct boot at the time specified in paragraph (e) of the proposed AD. The commenter asks that its program be included as an alternative method of compliance (AMOC) to the proposed AD, if possible.

We do not agree with the commenter. Early replacement of the original boot configuration with a NOMEX boot is critical to having a reliable seal in place. The flight-hour intervals used for maintenance checks may not ensure replacement of the original boot within 12 months. However, if maintenance records indicate that the original boot has been replaced with the new NOMEX fabric part, it is not necessary to repeat that action. Paragraph (e)(2) of this final rule is a continuing requirement which specifies that whenever a damaged boot of the original boot configuration is found it must be replaced before further flight, or within 5 days following detection if there are no leaks. The commenter may submit substantiating data that support a request for an AMOC per paragraph (i) of this AD. No change to the final rule is necessary in this regard.

Request To Change Compliance Time

Two commenters ask that the compliance time for the repetitive replacement of the O-rings and retaining rings, as specified in paragraph (d) of the proposed AD, be changed, as follows: One commenter states that it performs the repetitive replacement of the O-rings and retaining rings every 5 years.

We infer that the commenter wants to continue the replacement every 5 years, in lieu of the compliance time of every 21,000 flight hours or 5 years, whichever is earlier (unless a coupling is disassembled).

The same commenter states that it performs the fuel pressure leak check every 5 years when it replaces the O-rings and retaining rings, and would like to be allowed to continue at that interval in lieu of the 3-year interval specified in Boeing Service Bulletin 747–28–2230, dated September 30, 1999 (referenced in the proposed AD as the source of service information for accomplishment of the fuel leak check and strut drain inspection).

We acknowledge that the service bulletin specified recommends repeating the leak check every 3 years; however, the proposed AD does not require repetitive fuel pressure leak checks; only a one-time check within 12 months after the effective date of the AD.

Another commenter states that it performs the repetitive replacement of the O-rings and retaining rings during its D-check, and asks that all operators be allowed to perform the replacement at that time. The commenter also provides some statistics on cases of fuel leakage found and the corrective actions taken; and noted that there were more fuel leaks that occurred after maintenance of the fuel line coupling O-rings if specially trained mechanics did not do the maintenance, due to the necessity of using delicate installation procedures that are specific to that type of couplings.

We do not agree with the requests to extend the compliance time. The chronological age of the O-rings combined with flight hours produces the deterioration and fuel leaks. With regard to extending the compliance time to allow the replacement to be accomplished at a D-check or every 5 years, we have already considered factors such as operators' maintenance schedules in setting a compliance time for the required replacement and determined that 21,000 flight hours or 5 years, whichever is earlier (unless a coupling is disassembled), is an appropriate compliance time in which the replacement may be accomplished during scheduled airplane maintenance for the majority of affected operators. Since maintenance schedules vary from operator to operator, it would not be possible to guarantee that all affected airplanes could be modified during scheduled maintenance. In any event, we find that the specified compliance time represents the maximum time wherein the affected airplanes may continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. This regulation now includes material that relates to altered products, special flight permits, and AMOCs. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The following table provides the cost estimates to accomplish the required actions:

Boeing service information for required actions	Work hours per airplane	Hourly labor rate	Parts cost per airplane	Per-airplane cost	Number of U.S. airplanes affected	U.S. fleet cost
Service Bulletin 747–36–2111	10	$65	$0	$650	32	$20,800
Service Bulletin 747–28–2230	4	65	0	260	32	8,320
Service Letter 747–SL–28–052–B	4	65	0	260	32	8,320
Service Bulletin 747–36–2118	10	65	1,269	1,919	32	61,408
Service Bulletin 747–54–2137	48	65	3,047	6,167	30	185,010
Service Bulletin 747–54–2122	56	65	2,590	6,230	30	186,900

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–06 Boeing: Amendment 39–13259. Docket 2001–NM–232–AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6–45 or CF6–50 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaking fuel line couplings, chafed fuel lines, restricted or clogged strut drain lines, fluids or vapors migrating to ignition sources, and flashback of external flame into the strut, which could result in uncontained engine strut fire, accomplish the following:

Inspection for Chafing and Clearance

Note 2: Paragraph (a) of this AD refers to certain portions of Boeing Service Bulletin 747–36–2111, dated February 20, 1992, for information regarding inspection and measurement actions. Further, paragraph (a) of this AD requires replacement of the fuel tube as corrective action for certain repair conditions; that action is not included in the service bulletin. Where this AD and Service Bulletin 747–36–2111 differ, the AD prevails.

(a) Within 1,000 flight hours after the effective date of this AD, perform a detailed inspection to detect chafing of the fuel line and measure the clearance between the fuel line and the insulation blanket on the pneumatic duct, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–36–2111, dated February 20, 1992. Before further flight, accomplish all applicable corrective actions (including reworking the fuel line, remeasuring the clearance between the fuel line and the insulation blanket, adjusting the pneumatic duct and fuel line positions, adjusting the insulation blanket installation, and inspecting and cleaning the strut and strut drain ports/screens); and, if applicable, repeat the fuel line inspection at the applicable time in the Accomplishment Instructions of the service bulletin. Do the corrective and follow-on actions in accordance with Service Bulletin 747–36–2111. If, after corrective actions have been performed, a clearance of at least 0.40 inch on the number 4 strut cannot be achieved: Before further flight, replace the fuel tube with a new part in accordance with Boeing Service Bulletin 747–28–2162, dated July 30, 1992.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Fuel Leak Check and Outboard Strut Drain Inspection

(b) Within 12 months after the effective date of this AD, perform a fuel pressure leak check of the fuel line in the outboard strut area, and perform an outboard strut drain test for the aft strut drain tubes to detect blockage; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2230, dated September 30, 1999. If any discrepancy is found, before further flight, perform applicable corrective actions (including performing the fuel pressure check procedure, clearing the strut drain tubes, and repairing seal leaks) in accordance with the service bulletin.

Replacement of O-Rings and Retaining Rings

(c) At the earliest of the times specified by paragraphs (c)(1), (c)(2), and (c)(3) of this AD, replace the fuel line coupling O-rings and retaining rings in the outboard strut positions with new Nitrile O-rings, part number MS29513–330, in accordance with Boeing Service Letter 747–SL–28–052–B, dated August 30, 1998. Replace the rings thereafter at the time specified by paragraph (d) of this AD.

(1) Within 21,000 flight hours after the effective date of this AD.

(2) Within 5 years after the effective date of this AD.

(3) Before further flight after a coupling has been disassembled for any reason.

Repetitive Ring Replacement

(d) Replace the rings as required by paragraph (c) of this AD at intervals not to exceed the earliest of the times specified by paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Every 21,000 flight hours.

(2) Every 5 years.

(3) Before further flight after a coupling has been disassembled for any reason.

Replacement of Pneumatic Duct Boot

(e) At the earlier of the times specified in paragraphs (e)(1) and (e)(2) of this AD: Replace the fiberglass fabric pneumatic duct boot with a new NOMEX fabric part, in accordance with Boeing Service Bulletin 747–36–2118, dated January 28, 1993.

(1) Within 12 months after the effective date of this AD; or

(2) Before further flight following detection of any torn boot; or within 5 days following detection of any torn boot, provided there are no leaks, liquid fuel, or vapors in the affected strut compartment.

Installation of Flame Arrestor

(f) For airplanes identified in Boeing Service Bulletin 747–54–2137, dated February 6, 1992: Within 24 months after the effective date of this AD, install a flame arrestor in each aft condensate drain hole of the outboard engine struts, in accordance with the Accomplishment Instructions of the service bulletin.

Installation of Drain Screen

(g) For Group 2 and Group 4 airplanes listed in Boeing Service Bulletin 747–54–2122, Revision 4, dated August 29, 1991, as revised by Notice of Status Change 747–54–2122 NSC 2, dated May 14, 1992; and Information Notice 747–54–2122 IN 03, dated August 19, 1999: Within 24 months after the effective date of this AD, install a drain line entry screen at each drain tube entry at the outboard strut positions, in accordance with the Accomplishment Instructions of the service bulletin. Where the service bulletin specifies that certain actions may be accomplished in accordance with an operator's ''equivalent procedure': Those actions must be accomplished in accordance with the applicable Boeing 747 Airplane Maintenance Manual subject specified in the service bulletin.

(h) Installation of drain screens before the effective date of this AD is also acceptable for compliance with the requirements of paragraph (g) of this AD if accomplished in accordance with Boeing Service Bulletin 747–54–2122, Revision 1, dated December 14, 1989; Revision 2, dated May 3, 1990; or Revision 3, dated October 4, 1990.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle

Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–36–2111, dated February 20, 1992; Boeing Service Bulletin 747–28–2162, dated July 30, 1992; Boeing Special Attention Service Bulletin 2 747–28–2230, dated September 30, 1999; Boeing Service Letter 747-SL–28–052-B, dated August 30, 1998; Boeing Service Bulletin 747–36–2118, dated January 28, 1993; Boeing Service Bulletin 747–54–2137, dated February 6, 1992; and Boeing Service Bulletin 747–54–2122, Revision 4, dated August 29, 1991, as revised by Notice of Status Change 747–54–2122 NSC 2, dated May 14, 1992, and Information Notice 747–54–2122 IN 03, dated August 19, 1999; as applicable.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on September 12, 2003.

Issued in Renton, Washington, on July 31, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19981 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–16–AD; Amendment 39–13260; AD 2003–16–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain cockpit lateral fixed windows manufactured by PPG Aerospace. This amendment requires detailed repetitive inspections of the cockpit lateral fixed windows to detect moisture ingression and delamination, and follow-on/corrective actions, as applicable. This AD also provides for an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent moisture ingression and delamination of the cockpit lateral fixed windows, which could result in the loss of the outer glass ply, and consequent damage to the airplane and injury to people or damage to property on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective September 12, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain cockpit lateral fixed windows manufactured by PPG Aerospace was published in the **Federal Register** on April 11, 2003 (68 FR 17757). That action proposed to require detailed repetitive inspections of the cockpit lateral fixed windows to detect moisture ingression and delamination, and follow-on/corrective actions, as applicable. That action also proposed an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. A single comment which concurred with the proposed AD was submitted.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. However, the language in the Summary and the Supplementary Information sections of this preamble has been revised to clarify that ''detailed repetition inspections'' rather than ''a detailed inspection,'' are required until the optional terminating action is accomplished.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 36 Airbus Model A319, A320, and A321 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the detailed inspections to identify moisture ingression of certain identified cockpit

lateral fixed windows, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,680, or $130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–07 Airbus: Amendment 39–13260. Docket 2002–NM–16–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, equipped with PPG Aerospace cockpit lateral fixed windows having part number (P/N) NP–165313–1 or NP–165313–2, and having a serial number (S/N) below 95001H0001 (PPG Aerospace manufacturing date before January 1, 1995).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture ingression and delamination of the cockpit lateral fixed windows, which could result in the loss of the outer glass ply and consequent damage to the airplane and injury to people or damage to property on the ground, accomplish the following:

Repetitive Inspections and Replacement, if Necessary

(a) Within 500 flight hours after the effective date of this AD, perform a detailed inspection to detect urethane degradation or delamination of the outer glass ply; per the Accomplishment Instructions of Airbus Service Bulletin A320–56–1009, Revision 01, including Appendix 01, dated July 4, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no urethane degradation or delamination is found: Accomplish the actions specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours, until the replacement specified in paragraph (a)(1)(ii) of this AD has been accomplished; or

(ii) Within 500 flight hours after the inspection required by paragraph (a) of this AD: Replace the cockpit lateral fixed windows with new windows having P/N NP–165313–1 or NP–165313–2, and S/N 95001H0001 or above (PPG Aerospace manufacturing date January 1, 1995, or after); or with new windows having P/N NP–165313–3 or NP–165313–4; per the Accomplishment Instructions of the service bulletin. Accomplishment of the replacement terminates the requirements of this AD.

(2) If any urethane degradation is found: Within 50 flight hours after the inspection required by paragraph (a) of this AD, accomplish the replacement specified in paragraph (a)(1)(ii) of this AD.

(3) If any delamination is found: Before further flight, measure the length of the delamination per the Accomplishment Instructions of the service bulletin.

(i) If the length of the delamination is less than or equal to 1.0 inch (25.4 millimeters (mm)): Accomplish the actions specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(ii) If the length of the delamination is greater than 1.0 inch (25.4 mm): Within 50 flight hours after the inspection required by paragraph (a) of this AD, accomplish the actions specified in paragraph (a)(1)(ii) of this AD.

Note 3: The Airbus service bulletin references PPG Aerospace Service Bulletin NP–165313–56–001, dated May 15, 2001, as an additional source of service information for accomplishing the applicable actions required by this AD.

Actions Accomplished per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD, per Airbus Service Bulletin A320–56–1009, dated August 30, 2001, are considered acceptable for compliance with the actions required by this AD.

Information Collection

(c) Although the service bulletin referenced in this AD specifies to submit information the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified, the actions shall be done in accordance with Airbus Service Bulletin A320–56–1009, Revision 01, including Appendix 01, dated July 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–632(B), dated December 26, 2001.

Effective Date

(g) This amendment becomes effective on September 12, 2003.

Issued in Renton, Washington, on July 31, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19982 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–117–AD; Amendment 39–13261; AD 2003–16–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F Series Airplanes; and Model 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SR series airplanes. For certain airplanes, this AD requires repetitive inspections of the clevis bushings on the inboard and outboard sequence carriages of the wing foreflap for bushing migration, and corrective action if necessary; replacement of existing bushings with new bushings, which terminates the repetitive inspections; and replacement of the bushing markers with new markers, if necessary, to indicate the correct bushing orientation. For certain other airplanes, this AD requires a one-time inspection to determine whether the bushings are in the correct orientation, and follow-on actions. The actions specified by this AD are intended to prevent the loss of an inboard trailing edge foreflap during flight, and subsequent damage to the airplane in flight. This action is intended to address the identified unsafe condition.

DATES: Effective September 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SR series airplanes; was published in the **Federal Register** on January 4, 2002 (67 FR 544). For certain airplanes, that action proposed to require repetitive inspections of the clevis bushings on the inboard and outboard sequence carriages of the wing foreflap for bushing migration, and corrective action if necessary; replacement of existing bushings with new bushings, which would terminate the repetitive inspections; and replacement of the bushing markers with new markers, if necessary, to indicate the correct bushing orientation. For certain other airplanes, that action proposed to require a one-time inspection to determine whether the bushings are in the correct orientation, and follow-on actions.

Explanation of Relevant Service Information

The proposed AD cited Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993, as the appropriate source of service information for accomplishment of the proposed requirements. Since the proposed AD was issued, Boeing has further revised the service bulletin; however, Revision 6, dated January 16, 2003, adds no new requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD

One operator disagrees that the proposed AD is necessary or justified. The operator questions the need for additional rulemaking in light of existing regulatory actions that address a similar incident and unsafe condition. The operator notes that inspection of the bushings that are the subject of the proposed AD is also required by AD 92–27–04, amendment 39–8437 (57 FR 59801, December 16, 1992), as corrected (58 FR 8693, February 17, 1993). In addition, the operator considers the incident described in the proposed AD (involving a foreflap separating from and colliding with an airplane in flight) to be the same situation addressed by AD 99–05–02, amendment 39–11051 (64 FR 9906, March 1, 1999). The operator further suggests that the proposed requirement to permanently install markers would subject the markers to considerable wear and, in combination with other related ADs, could have long-term and costly effects on operations and maintenance. Moreover, the operator doubts that incorrect markers would still be installed on airplanes after 8 years in service, asserting that the manufacturer has purged all stocks of incorrect markers.

The FAA does not concur with the request to withdraw the proposed AD. In the incident that led to this rulemaking, the foreflap departed the airplane during flight and collided with the fuselage, resulting in a 5½-foot by 3-foot hole in the fuselage—despite the prior accomplishment of the requirements of AD 92–27–04 on that airplane. This incident illustrates the danger of large pieces of airplane structure departing the airplane. AD 99–05–02 was issued to correct certain conditions with certain shims and

fasteners associated with flap carriages and is not related to the bushing problem addressed by this AD.

Also, the commenter did not provide adequate data to support the claim that no incorrect markers would still be installed on an airplane after 8 years in service. Contrary to the commenter's assertion, Boeing reports that its supply of incorrect markers has not been purged. When Boeing first revised the marker to show the correct orientation, the part number of the new marker was the same as the marker showing the incorrect orientation (part number BAC27EWG–24). Boeing created a new marker with a new part number (BAC27EWG–39). According to Boeing Service Letter 747–SL–57–77, ''* * * due to the large numbers of correct BAC27EWG–24 markers already in stock, the BAC27EWG–39 was made an option to the correct BAC27EWG–24 marker. This may have allowed some of the incorrect BAC27EWG–24 markers to be installed.'' Therefore, because some markers showing incorrect orientation may still be installed on affected airplanes, the FAA finds it necessary to issue this AD.

Request To Reconcile Applicability

One commenter identifies a difference between the applicability of the proposed AD and the effectivity of Service Bulletin 747–57–2166. The proposed AD includes Model 747–400s, which are not listed in the service bulletin. The commenter requests that this disagreement be corrected before the AD is issued.

The FAA acknowledges the disagreement; however, as explained in the proposed AD, Boeing had reported (via Service Letter 747–SL–57–77, dated November 18, 1993) that the subject incorrect markers may also be installed on Model 747–400 airplanes. Model 747–400 airplanes (except the Model 747SP, which has flaps of a different design) are correctly included in the applicability of this AD. No change to the final rule is necessary regarding this issue.

Request To Revise Identity of Airplanes Affected by Certain Requirements

One operator requests that paragraphs (a) and (b) of the proposed AD be revised to clarify the group of airplanes subject to those proposed requirements. Paragraphs (a) and (b), as proposed, identify airplanes with respect to bushing replacement done in accordance with a certain service bulletin. However, for certain airplanes (*i.e.*, those with line numbers after 316), the bushings were installed correctly by means of a production change. The operator concludes that paragraphs (a) and (b), as written in the proposed AD, would have excluded airplanes on which the production change had been completed.

The FAA concurs with the request, for the reasons provided by the commenter. The intent of paragraphs (a) and (b)—as well as (c) and (d)—of this AD is to consider the status of the bushing installation—regardless of the method followed (*i.e.*, the service bulletin or the production change). Paragraphs (a) through (d) have been revised in the final rule to reflect this intent.

Request To Revise Compliance Time

One operator requests that the proposed grace period and repetitive inspection interval be revised to correspond to the operator's C-check schedule. The proposed 1,200-flight-cycle interval would not conform to the operator's C-check schedule, so the operator would need to schedule intermediate maintenance to comply with the proposed AD. This commenter suggests that the proposed grace period and repetitive inspection interval be changed to ''1,200 flight cycles or 18 months, whichever occurs later,'' which would allow the inspections to be accomplished during the operator's regularly scheduled maintenance.

The FAA does not concur. Failure of the clevis lug is flight-cycle-dependent, not time-dependent. Allowing an 18-month interval between inspections for high utilization airplanes would not provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Require Operator To Revise Maintenance Manual

One operator suggests that the Boeing 747 Airplane Maintenance Manual may contribute to the identified unsafe condition because the Boeing overhaul manual (referenced in the maintenance manual) does not specify that the bushings be installed in the orientation specified in the proposed AD. The operator adds that a manual revision would be more effective than an AD in addressing the unsafe condition.

The FAA disagrees. The operator may have been considering a now-obsolete airplane maintenance manual; the most recent version of the maintenance manual specifies the correct installation of the bushing. No change to the final rule is necessary in this regard.

Request To Clarify Terminating Action Requirement

One commenter requests clarification of paragraph (c) of the proposed AD. The commenter questions whether the intent of the requirement is to replace all bushings—whether or not the bushing installation is properly oriented—in accordance with Revision 5 of the service bulletin.

The FAA agrees that clarification of the requirement might be necessary. However, as stated previously, paragraph (c) has been revised in the final rule. The changes made to paragraph (c) of this AD address this commenter's concerns.

Explanation of Additional Changes to Proposed AD

Several changes have been made to the proposed AD. Paragraphs (a) and (b) of the proposed AD specify accomplishment of a ''general visual inspection.'' The FAA has recharacterized this as a ''detailed inspection'' in the final rule to clarify the type of inspection required; the inspection procedures remain the same. Note 1 in this final rule defines a detailed inspection.

Paragraph (d) of the proposed AD has been retitled ''Part Installation'' to more accurately identify the requirement. In addition, the text of paragraph (d) has been revised for clarification.

Although the applicability identified in the proposed AD remains the same, the number of airplanes affected by this final rule has been corrected (as specified in the Cost Impact section).

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). The office authorized to approve AMOCs is identified in paragraph (e) of this proposed AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary

to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 731 airplanes of the affected design in the worldwide fleet. The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $62,335, or $455 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–08 Boeing: Amendment 39–13261. Docket 2001–NM–117–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SR series airplanes; certificated in any category; line numbers 1 through 1009, except 968, 999, 1004, and 1007.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of an inboard trailing edge foreflap during flight, and subsequent damage to the airplane in flight, accomplish the following:

Inspections (Bushings Not Yet Replaced)

(a) For airplanes having line numbers 1 through 316 on which the bushings have not been replaced prior to the effective date of this AD: Prior to the accumulation of 5,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection for migration of the bushings of the clevis on the inboard and outboard sequence carriages, flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap. Do the inspection in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For each nondiscrepant bushing (with no migration): Repeat the inspection of that bushing at intervals not to exceed 1,200 flight cycles, until the terminating action required by paragraph (c) of this AD has been accomplished.

(2) For any discrepant bushing: Prior to further flight, replace the discrepant bushing with a new bushing and, if applicable, replace the bushing marker with a new marker, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003. No further action is required by this AD for that bushing only.

Note 2: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; and Revision 6, dated January 16, 2003).

Inspection (Bushings Replaced)

(b) For airplanes having line numbers 1 through 316 inclusive on which the bushings have been replaced before the effective date of this AD in accordance with any instructions other than Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003; and for airplanes having line numbers 317 through 1009 inclusive, except line numbers 968, 999, 1004, and 1007: Prior to the accumulation of 5,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time detailed inspection of the orientation of the bushings of the clevis on the inboard and outboard sequence carriages, flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap. Do the actions in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003. For airplanes having line numbers 1 through 316 inclusive on which a bushing has been replaced before the effective date of this AD in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003: This AD requires no further action for that bushing only.

(1) For each bushing that is oriented correctly: Within 5 years after the effective date of this AD, replace the markers installed on the airplane with new markers, as applicable, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003.

Note 3: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; and Revision 6, dated January 16, 2003).

(2) For any bushing that is oriented incorrectly: Prior to further flight, perform a detailed inspection of the bushing for bushing migration, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003.

(i) For each nondiscrepant bushing (with no migration): Repeat the inspection specified in paragraph (b)(2) of this AD at intervals not to exceed 1,200 flight cycles,

until the terminating action required by paragraph (c) of this AD has been accomplished.

(ii) For any discrepant bushing: Prior to further flight, replace the discrepant bushing with a new bushing and, if applicable, replace the bushing marker with a new marker, in accordance with the service bulletin. No further action is required by this paragraph for that bushing only.

Note 4: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; and Revision 6, dated January 16, 2003).

Terminating Action

(c) Within 5 years after the effective date of this AD: Replace the existing bushings of the clevis on the inboard and outboard sequence carriages, in flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap. Do the actions in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003. Replacement of the bushings in accordance with Boeing Service Bulletin 747–57–2166, Revision 4, dated December 6, 1990, or previous revision, is acceptable, provided the bushings are inspected as required by paragraph (b) of this AD and found to be in the correct orientation. The initial bushing installation by the manufacturer for airplanes having line numbers 317 and subsequent is also acceptable, provided the bushings are inspected at the specified time and as required by paragraph (b) of this AD and found to be in the correct orientation. Also, as applicable, before further flight, replace the markers installed on the airplane with new markers in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Revision 6, dated January 16, 2003. Replacement of all bushings, and markers as applicable, terminates the requirements of this AD.

Note 5: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; and Revision 6, dated January 16, 2003).

Part Installation

(d) As of the effective date of this AD, no person shall install on any airplane a carriage and toggle assembly unless the requirements of paragraph (c) of this AD have been accomplished for that assembly.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993; or Boeing Service Bulletin 747–57–2166, Revision 6, dated January 16, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 12, 2003.

Issued in Renton, Washington, on July 31, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19983 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB97

Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending rules which provide an exclusion from the definition of the term ''commodity pool operator'' (CPO) for certain persons, and which provide exemption from CPO and commodity trading advisor (CTA) registration, respectively, for certain other persons, so as to expand the availability of the relief provided by these rules. These amendments supercede the no-action relief the Commission previously issued with respect to the trading criteria for certain persons and the need to register as a CPO or CTA for certain other persons. The Commission also is amending its rules to facilitate communications by CPOs and CTAs, by permitting certain communications prior to Disclosure Document delivery; relieving CPOs from duplicative disclosure and reporting requirements in the ''master/feeder fund'' context; permitting CPOs to distribute Account Statements and Annual Reports electronically; permitting CPOs to use facsimile signatures on Account Statements and Annual Reports; and conforming various signature requirements. Further, the Commission is addressing certain issues related to the calculation and presentation of past performance by CPOs and CTAs not addressed in the recent final rulemaking on CPO and CTA past performance.

DATES: Effective August 8, 2003 except § 4.35(a)(1)(viii) which is effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: For all rules other than Rule 4.35(a), Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, and for Rule 4.35(a), Kevin P. Walek, Assistant Director, or Eileen Chotiner, Futures Trading Specialist, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418–5450, (202) 418–5445, (202) 418–5463, or (202) 418–5467, respectively; facsimile number: (202) 418–5528; and electronic mail: *bgold@cftc.gov, ccummings@cftc.gov, kwalek@cftc.gov* or *echotiner@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Proposal for Additional Registration and Other Regulatory Relief for CPOs and CTAs

A. Statutory and Regulatory Authorities

Section 1a(5) of the Commodity Exchange Act (Act) defines the term ''commodity pool operator'' to mean:

[A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility,* * *[1]

Section 4m(1) of the Act[2] provides, in relevant part, that it is unlawful for any CPO, ''unless registered under (the Act), to make use of the mails or any means or instrumentality of interstate commerce'' in connection with its business as a CPO. Rules 4.5 and 4.13, provide exemptions from CPO registration.

Section 1a(6)(A) of the Act defines the term *commodity trading advisor* to mean any person who:

(i) For compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;

(II) any commodity option authorized under section 6c of this title; or

(III) any leverage transaction authorized under section 23 of this title; or

(ii) For compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).[3]

Section 4m(1) of the Act also requires CTAs to register as such with the Commission and, along with section 4m(3) and Rule 4.14, provides exemption from CTA registration.

If a person is exempt from registration as a CPO or CTA, its associated persons (APs) are not required to register as such. Further, neither the exempt CPO or CTA, nor any of its APs, is required to become a member of a registered futures association.

Generally, CPOs and CTAs who are, or who are required to be, registered with the Commission, must provide prospective pool participants or advisory clients, as the case may be, with a Disclosure Document containing specified information[4]—*e.g.*, the business background of the CPO or CTA and its principals, past performance, fees and other expenses, and conflicts of interest—and they must make and keep specified books and records.[5] These CPOs also must provide unaudited periodic financial reports and certified annual reports to participants in their pools.[6] Additionally, regardless of registration status, all persons who come within the CPO or CTA definition are subject to certain operational[7] and advertising requirements[8] under part 4, to all other provisions of the Act and the Commission's rules prohibiting fraud that apply to CPOs and CTAs, and to all other relevant provisions of the Act and the Commission's rules that apply to all commodity interest market participants, such as the general antifraud provisions, prohibitions on manipulation and the trade reporting requirements.

B. The Proposal

On March 17, 2003, the Commission published proposed revisions to Rules 4.5, 4.13, and 4.14 and various other rules under part 4 of its regulations (Proposal).[9] The Commission based the Proposal on a prior Rule 4.5 proposal;[10] an Advance Notice of Proposed Rulemaking (ANPR) setting forth additional CPO and CTA registration exemptions submitted by the National Futures Association (NFA) and an additional CPO registration exemption submitted by the Managed Funds Association (MFA);[11] the Commission's Roundtable on CPO and CTA Issues (Roundtable);[12] and generally on its staff's experience in administering part 4 of the regulations (Part 4 Rules).

Specifically, the Commission proposed to amend: (1) Rule 4.5, by deleting from the rule any trading criteria and corresponding disclosure requirement for eligibility for an exclusion from the CPO definition; (2) Rule 4.13, by expanding the availability of existing relief from CPO registration and providing for additional CPO registration exemptions thereunder; (3) Rule 4.14, similarly by expanding the availability of existing relief from CTA registration and providing for additional CTA registration exemptions thereunder; (4) Rules 4.21 and 4.31, by permitting certain communications with prospective pool participants and managed account clients, respectively, prior to Disclosure Document delivery; (5) Rules 4.21 and 4.22, by removing duplicative disclosure and reporting requirements in the ''master/feeder fund'' context; (6) Rule 4.22, by providing for electronic distribution of Account Statements and Annual

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[1] 7 U.S.C. 1a(5) (2000). Section 1a(5) also provides the Commission with authority to exclude persons from the CPO definition.

Commission Rule 4.10(d)(1) correspondingly defines the term ''pool'' to mean ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.'' Unless otherwise noted, Commission rules cited to herein are found at 17 CFR Ch. I (2003). Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site, at: *http://www.cftc.gov/cftc/cftclawreg.htm.*

CFTC Staff Letters issued since 1995 may be accessed through *http://www.cftc.gov/opaletters.htm.*

[2] 7 U.S.C. 6m(1) (2000).

[3] 7 U.S.C. 1a(6)(A) (2000).

Section 1a(6) also excludes certain persons not at issue here from the CTA definition, and provides the Commission with authority to exclude addditional persons from that definition.

[4] Rule 4.21 for CPOs and Rule 4.31 for CTAs.

[5] Rule 4.23 for CPOs and Rule 4.33 for CTAs.

[6] Rule 4.22.

[7] Rule 4.20 for CPOs and Rule 4.30 for CTAs.

[8] Rule 4.41.

While Rules 4.7 and 4.12(b) provide relief for certain registered CPOs from the Disclosure Document, periodic and annual reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23, they do not affect the applicability of Rules 4.20 and 4.41 to these CPOs. Similarly, CTAs who have claimed relief under Rule 4.7 continue to remain subject to Rules 4.30 and 4.41.

[9] 68 FR 12622. The Proposal may be accessed through *http://www.cftc.gov/foia/fedreg03/foi030317b.htm.*

[10] 67 FR 65743 (Oct. 28, 2002). Both the prior Rule 4.5 proposal and the comment letters the Commission received thereon may be accessed through *http://www.cftc.gov/foia/fedreg02/foi021028a.htm.*

[11] 67 FR 68785 (Nov. 13, 2002). Both the ANPR and the comment letters the Commission received thereon may be accessed through *http://www.cftc.gov/foia/fedreg02/foi021113a.htm.*

[12] *See* 68 FR 12622, 12624–25 for a discussion of the origin and outcome of the Roundtable. Comments received in connection with the Roundtable may be accessed through *http://www.cftc.gov/opa/press02/opa4700-02.htm.*

Reports; and (7) Rules 4.7, 4.12, 4.13 and 4.22, by conforming the various signature requirements thereof.[13]

In announcing the Proposal, the Commission stated:

> The relief the Commission is proposing today is consistent with the purpose and intent of the CFMA (Commodity Futures Modernization Act of 2000), and with the input the Commission has received in connection with its prior initiatives. . . . Accordingly, it is intended to allow greater flexibility and innovation, and to take into account market developments and the current investment environment, by modernizing the requirements for determining who should be excluded from the CPO definition, and who should remain within the CPO and CTA definitions but be exempt from registration. Thus, this relief is intended to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity.[14]

In connection with issuing the Proposal, the Commission also provided temporary no-action relief to Rule 4.5 eligible persons and CPOs and CTAs who met the trading and other criteria specified therein (Temporary No-Action Relief).[15] The Proposal required that the Temporary No-Action Relief be claimed by filing a notice with the Commission. The effect of this final rulemaking on claimants under the Temporary No-Action Relief is discussed below.[16]

C. The Comments on the Proposal

The Commission received thirty-one comment letters on the Proposal, as follows: Six from registered CPOs and CTAs; two from registered introducing brokers; two from registered securities investment advisers; one from a registered futures association; one from a futures industry trade association; two from securities industry trade associations; nine from law firms; one from a bar association; one from a certified public accounting firm; and six from retail investors. The majority of these commenters voiced strong support for the Proposal, by such statements as that it would fulfill the Commission's express purposes in making the Proposal, would better harmonize CFTC and Securities and Exchange Commission (SEC) regulation of investment management professionals, and would go a long way toward addressing the issues raised at the Roundtable.[17]

In light of these comments, the Commission generally is adopting the revisions to the Part 4 Rules that it proposed. Where the Commission is making a change from the Proposal, it discusses the change below.[18] In the **Federal Register** release announcing the Proposal (Proposing Release), the Commission gave a detailed explanation of each rule amendment it had proposed to make.[19] Accordingly, the scope of this **Federal Register** release generally is restricted to the comments received on the Proposal and to the changes to, and clarifications of, the Proposal that the Commission is making in response thereto. The Commission encourages interested persons to read the Proposing Release for a fuller discussion of the purpose of each of the amendments contained in the Proposal.

D. Significant Changes From the Proposal

The significant changes from the Proposal that the Commission is making in the rules it is adopting today are as follows: (1) Rule 4.5 no longer contains a ''marketing'' restriction, but it does require disclosure of the fact, and effect, of a claim for exclusion from the CPO definition; (2) Rule 4.13(a)(3) expands the trading limit criterion thereunder to ''5 percent'' and ''100 percent,'' from the proposed ''2 percent'' and ''50 percent'' limits; (3) Rule 4.13(a)(3) expands the investor eligibility criterion thereunder to ''knowledgeable employees'' and certain other persons, in addition to ''accredited investors,'' as proposed; and (4) Rule 4.22 now provides for electronic distribution of Annual Reports, in addition to Account Statements, as proposed, where a CPO furnishes a one-way disclosure notice and the pool participant does not timely object to such distribution.

In addition, the Commission is clarifying: (1) The meaning of the term ''aggregate net notional value'' in Rule 4.13(a)(3); (2) the effect of this final rulemaking on the Temporary No-Action Relief; (3) the applicability of the Annual Report requirement to CPOs who withdraw from registration in reliance upon Rule 4.13(a)(3) or (a)(4); and (4) in new Appendix A to Part 4, the application of the Rule 4.13(a)(3) trading limit criteria to a broad range of fund-of-fund situations.

II. Responses to the Comments on the Proposal

A. Amendment to Rule 4.5: Deleting Trading and ''No Marketing'' Criteria for Exclusion From the CPO Definition

The Commission proposed to amend the operating criteria of Rule 4.5 by deleting therefrom provisions concerning commodity interest trading restrictions and related disclosures.[20] The Commission explained that the operating criteria of the rule would continue to include the ''no marketing'' and submission to special calls requirements. The Commission reasoned that ''it is appropriate to maintain the marketing restriction because, unlike the case with the proposed CPO registration exemption, members of the retail public may participate in the trading vehicles subject to Rule 4.5.'' [21] The Commission nonetheless requested comment on the merits of retaining the ''no marketing'' criterion—*i.e.*, that a Rule 4.5 qualifying entity ''will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets.''

In response to this request, one commenter agreed with the proposed retention of the ''no marketing'' criterion (and with the Commission's rationale therefore) but several commenters disagreed with it. This latter group supported its position with claims that, in the absence of any trading restriction, the ''otherwise regulated'' nature of the qualifying entities specified in Rule 4.5 would provide adequate customer protection, and, further, that compliance with the subjective nature of the marketing restriction could give rise to the possibility of unequal enforcement where commodity interest trading was restricted.

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[13] *See* 68 FR 12622, 12625–30.

[14] 68 FR 12622, 12625.

[15] *See* 68 FR 12622, 12630–32.

[16] *See* II.F.1. above.

[17] The six retail investors submitted nearly identical letters, each of which stated in general terms that the Commission should do more rather than less to protect investors, and that hedge funds should be subject to ''full and fair'' disclosure standards. These letters did not, however, refer to any specific proposed rule or any of the Commission's specific requests for comments. One of the other commenters on the Proposal suggested changes to Rules 4.5 and 4.13 that would have made the relief thereunder available to additional types of pension plan entities. This suggestion is outside the scope of this rulemaking. Accordingly, the Commission intends to consider the merits of the application of Rule 4.5 or 4.13 to any such plan on a case-by-case basis. (However, some of those plans are now covered by the rules the Commission is publishing today. *See, e.g.*, Rule 4.14(a)(8)(i)(C)(*2*).)

[18] In addition, the Commission is adopting certain clarifying amendments to Rule 4.7, such that Rule 4.7(a)(2)(vi) now refers to section 2(a)(51)(A) of the Investment Company Act of 1940 and Rule 4.7(a)(3)(viii) now includes ''a limited liability company or similar business venture.'' Also, to clarify the availability of Rule 4.13(a)(2), the Commission is employing the term ''participant'' in lieu of the term ''person'' in Rule 4.13(a)(2)(iii).

[19] *Supra* n.13.

[20] *See* 68 FR 12622, 12625–26.

[21] 68 FR 12622, 12626.

In light of these comments, the Commission is amending Rule 4.5 such that it no longer contains any restrictions relating either to commodity interest trading or to marketing of the entity. The rule does, however, continue to require disclosure to investors ''now, that the qualifying entity's operator has claimed exclusion from the CPO definition, and that therefore the person is not subject to CPO registration and regulation under the Act. This requirement is set forth in paragraph (c)(2)(i) of the amended rule. The Commission did not propose to change the ''special call'' provision of Rule 4.5, and, accordingly, the rule continues to contain this provision, in paragraph (c)(2)(ii).[22]

The disclosure requirement the Commission is adopting today may be satisfied in the same manner that the Commission previously established for the (albeit now deleted) disclosure of commodity interest trading limits under Rule 4.5—*i.e.*:

> through inclusion of the specified information in any document which is required by the qualifying entity's other Federal or State regulator to be routinely furnished to participants or, if no such document is required to be routinely furnished, through disclosure in any instrument that is required by the other regulator to establish the entity's investment policies and objectives and which is required by such other regulator to be made available (but not specifically furnished) to the entity's participants.[23]

At the request of other commenters, the Commission confirms that Rule 4.5 does not affect the ability of a person who has claimed an exclusion from the CPO definition thereunder: (1) To invest in any other trading vehicles—*e.g.*, a commodity pool that engages in unlimited commodity interest trading; and (2) to qualify for an exemption from registration as a CPO under Rule 4.13 in connection with its operation of another trading vehicle that is not covered under Rule 4.5—*e.g.*, a trading vehicle that is not a registered investment company covered under Rule 4.5(b)(1) or a non-pool covered under Rule 4.5(a)(4). This latter confirmation is contained in new Rule 4.5(g), and new Rule 4.13(f) contains a reciprocal provision for CPOs claiming registration relief thereunder. Also, the Commission is discussing below the effect of this rulemaking generally on persons who previously have claimed relief under Rule 4.5.[24]

The Commission did not propose, and is not now adopting, any other amendments to Rule 4.5. Thus, the proviso to Rule 4.5(c) continues to state that compliance with the operating criteria of the rule:

> shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which (an eligible) person or qualifying entity is established.

Moreover, eligible persons and qualifying entities remain subject to all relevant provisions of the Act and the Commission's rules that apply to all commodity interest market participants, such as the general antifraud rules, the prohibitions on manipulation and the trade reporting requirements.[25]

B. Amendments to Rule 4.13: Adding CPO Registration Exemptions

1. Use of Terms Defined Under the Federal Securities Laws

Various of the new CPO registration exemptions under Rule 4.13 that the Commission is adopting today base eligibility on pool participants coming within the meaning of a term that is defined under the federal securities laws—*e.g.*, that of ''accredited investor,''; defined in Rule 501(a) under the Securities Act of 1933 ('33 Act).[26] As requested by commenters, by this **Federal Register** release the Commission confirms that it intends to follow interpretations issued by the SEC and its staff of these definitions and in the event any of these definitions are amended, the Commission will utilize the revised definitions in the applicable Rule 4.13 exemption. However, as the Commission stated in connection with adopting revisions to Rule 4.7 that similarly base relief on certain of these terms:

> The Commission has the right further to interpret or to amend Rule 4.7 to exclude from the (qualified eligible person definition) any person that the SEC or its staff found to be a QP or knowledgeable employee or to include in the (qualified eligible person definition) any person the SEC or its staff excluded from the QP or knowledgeable employee definition, if such action is found to be necessary to effectuate the purposes of the Act and the Commission's regulations. The Commission expects that it would exercise this right infrequently.[27]

2. New Rule 4.13(a)(3): Adding an Exemption Where Commodity Interest Trading Is Limited and Pool Participants are Sophisticated

a. In General

The Commission proposed new Rule 4.13(a)(3) to provide an exemption from CPO registration where: (1) The pool a person operates engages in a limited amount of commodity interest trading—*i.e.*, by committing no more than 2 percent of the liquidation value of the pool's portfolio to establish commodity interest trading positions, whether entered into for *bona fide* hedging purposes or otherwise, *or* where the aggregate net notional value of the pool's commodity interest trading does not exceed 50 percent of the pool's liquidation value; (2) the CPO reasonably believes that each investor in the pool is an ''accredited investor''; and (3) the CPO does not market participations in the pool as or in a vehicle for trading in the commodity futures or commodity options markets.[28] After explaining how and why this proposal differed from the CPO registration exemption proposal submitted to the Commission by the National Futures Association (NFA) as set forth in the ANPR,[29] and after noting the comments received on the ANPR,[30] the Commission specifically requested comment on whether under the rule there should be: (1) A higher percentage of assets that may be committed to establish commodity interest positions; and (2) any greater ability to trade commodity interests for *bona fide* hedging purposes than for non-hedging purposes, including whether there should be any restriction whatsoever on trading for hedging purposes.

Many commenters provided input on proposed Rule 4.13(a)(3). Several of them stated that the proposed trading limits were too low, such that the exemption would be unavailable to many CPOs who should not be subject to the Commission's registration,

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[22] The special call provision previously was set forth in paragraph (c)(2)(iv) of Rule 4.5.

[23] 50 FR 15868, 15879 (Apr. 23, 1985).

The Commission further stated that it was aware that: certain qualifying entities—*e.g.*, registered investment companies—are required by their other regulators to make disclosures directly to their participants but that other qualifying entities—*e.g.*, a commingled trust fund of a federally regulated bank—may not be subject to any such direct disclosure requirement. The Commission intends that those other entities may satisfy this representation by indirect disclosure. For example, in the case of a bank commingled trust fund that intends to trade commodity interests on behalf of the various trust accounts comprising the commingled fund, the bank only needs to make the disclosure representation to the trustee of each underlying trust account. *Id.*, n.69.

[24] *See* II.F.1.

[25] As stated in I. A. above, these provisions also apply to persons exempt from registration as a CPO or CTA.

[26] 17 CFR 230.501(a) (2003). Other such terms found in Rule 4.13 are ''knowledgeable employee,'' defined in the Investment Company of 1940 (ICA), 17 CFR 270.3c-5 (2003), and ''qualified purchaser'' (QP), defined in Section 2(a)(51)(A) of the ICA.

[27] 65 FR 47848, 47852 (Aug. 4, 2000).

[28] *See* 68 FR 12622, 12626–27.

[29] *See* 67 FR 68785, 68786–87.

[30] *See* 68 FR 12622, 12626–27.

disclosure, reporting and recordkeeping requirements. One of these commenters recommended that the rule treat *bona fide* hedging and non-hedging positions alike, claiming that this would simplify trading limit calculations under the rule by avoiding the need to determine whether a particular ''risk management position'' qualifies as a hedging position, but another commenter recommended that no trading limits should be applicable to the CPO of a pool that trades commodity interests solely for hedging purposes. Two commenters urged that the rule should permit a limited number of non-accredited investors, such as ''knowledgeable employees.'' Commenters also requested clarification on the meaning of the term ''aggregate net notional value''; on whether security futures products (SFPs) are included in the Rule 4.13(a)(3) trading limit tests; and on whether, to qualify for relief under Rule 4.13(a)(3), a CPO must operate its pool pursuant to an exemption from registration under the '33 Act, as a ''privately-offered'' pool.[31]

In response to these comments, and in light of its own further deliberations on proposed Rule 4.13(a)(3), the Commission is making various changes from the Proposal in the final rule. Specifically, Rule 4.13(a)(3) as adopted requires: (1) That interests in the pool for which a CPO is seeking to claim relief thereunder must be exempt from registration under the ''33 Act and may not be marketed to the public in the United States (U.S.) (paragraph (a)(3)(i)); (2) that the pool may not commit more than 5 percent of assets to establish commodity interest positions or have a notional value of its commodity interest positions that exceeds *100* percent of the pool's liquidation value (paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B), respectively);[32] and (3) that the pool may include, as proposed, participants who are ''accredited investors,'' and in addition, certain family trusts formed by accredited investors; ''knowledgeable employees;'' and persons who are QEPs under Rule 4.7(a)(2)(viii)(A) (paragraph (a)(3)(iii)).[33]

Further, Rule 4.13(a)(3) as adopted now clarifies that: (1) At all times the pool must meet one or the other of the specified trading limits (paragraph (a)(3)(ii)); (2) security futures products are included in each test (paragraph (a)(3)(ii)); (3) the notional value of an option contract must reflect an adjustment for the delta of the contract (paragraph (a)(3)(ii)(B)(1)); and (4) contracts may be netted by underlying commodity and across designated contract markets, registered derivatives transaction execution facilities and foreign boards of trade (paragraph (a)(3)(ii)(B)(2)).

b. New Appendix A to Part 4: ''Fund-of-Funds''

Most of the commenters on proposed Rule 4.13(a)(3), and in fact, on the Proposal as a whole, expressed concern over the application of the Rule 4.13(a)(3) trading limits in the ''fund-of-funds'' context.[34] They requested the Commission to confirm in its final rulemaking statements it had made in the Proposal on this issue.[35] They also presented numerous scenarios involving ''fund-of-funds'' structures for the Commission to consider.

To address these concerns, the Commission is adopting today Appendix A to Part 4. The introductory text explains that:

> The following provides guidance on the application of the trading limits of Rule 4.13(a)(3)(ii) to commodity pool operators (CPOs) who operate ''fund-of-funds.'' For the purpose of this Appendix A, it is presumed that the investor fund CPO can comply with all of the other requirements of Rule 4.13(a)(3). It also is presumed that where the investor fund CPO is relying on its own computations, the investor fund is participating in each investee fund that trades commodity interests as a passive investor, with limited liability (*e.g.*, as a limited partner of a limited partnership or a non-managing member of a limited liability company). Fund-of-fund CPOs who seek to claim exemption from registration under Rule 4.13(a)(1), (a)(2) or (a)(4) may do so without regard to the trading engaged in by an investee fund, because none of the registration exemptions set forth in those rules concerns limits on or levels of commodity interest trading. Persons whose fact situations do not fit any of the scenarios below should contact Commission staff to discuss the applicability of the registration exemption in Rule 4.13(a)(3) to their particular situations.

In adopting Appendix A, the Commission has been guided by the following principles, *i.e.*, that relief under Rule 4.13(a)(3) should be available where:

(1) The CPO of each investee fund is either: (i) Itself claiming exemption from CPO registration under Rule 4.13(a)(3); or (ii) a registered CPO that is complying with the trading restrictions of Rule 4.13(a)(3). In this regard, the CPO of the investor fund should be able to rely upon the representations of the investee fund CPOs to the foregoing effect.

(2) The CPO of an investor fund has actual knowledge of the trading and commodity interest positions of the investee funds (*e.g.*, where the investee funds are operated by the CPO or one or more affiliates of the CPO). In this case the investor fund CPO may aggregate the commodity interest positions across the investee funds to determine compliance with the trading restrictions of Rule 4.13(a)(3).

(3) An investor fund does not trade commodity interests directly, and the CPO has allocated no more than 50 percent of the investor fund's assets to investee funds that trade commodity interests (regardless of the level of commodity interest trading engaged in by those investee pools). The investor fund CPO may claim exemption under Rule 4.13(a)(3) because the investor fund's exposure to the futures markets may be said to be comparable to that of a stand-alone pool that meets the aggregate net notional value test.

(4) An investor fund engages in direct commodity interest trading in addition to its allocation of assets to investee funds, provided the CPO treats the assets committed to direct trading as a separate pool with its own liquidation value and applies the trading restrictions of Rule 4.13(a)(3) to that ''separate pool.''

3. New Rule 4.13(a)(4): Adding an Exemption Where Pool Participants Are Highly Sophisticated

The Commission proposed new Rule 4.13(a)(4) to provide an exemption from CPO registration where: (1) Interests in the pool for which the CPO seeks to claim relief (a) are exempt from registration under the Securities Act of 1933, and (b) are offered and sold without marketing in the United States (U.S.); and (2) the CPO reasonably believes that (a) natural person participants are QEPs under Rule 4.7(a)(2), and (b) non-natural person participants are QEPs under Rule 4.7 or

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[31] This is a requirement under Rule 4.13(a)(4) as proposed and as adopted.

One commenter stated that since the investor criteria of Rules 4.13(a)(3) and (a)(4) include, among other persons, certain ''accredited investors,'' then it logically follows that the pool must be privately offered. That is the context in which the rules of the SEC (*e.g.*, Regulation D under the '33 Act) employ the term ''accredited investor.''

[32] Thus, the rule continues to include both hedging and non-hedging positions in the calculation of either test.

[33] As proposed and as adopted, Rule 4.13(a)(3) also generally prohibits the CPO from marketing participations in the pool ''as or in a vehicle for trading in the commodity futures or commodity options markets.''

[34] In the ANPR, the Commission defined a ''fund-of-funds'' as an investor fund that indirectly trades commodity interests through participation in one or more investee funds that directly trades commodity interests. *See* 67 FR 68785, 68788, n.15.

[35] *See* 68 FR 12622, 12631.

''accredited investors.'' [36] After explaining how and why this proposal differed from the CPO registration exemption proposal submitted to the Commission by the MFA, as set forth in the ANPR,[37] the Commission requested comment on what investor qualifications would be appropriate under proposed Rule 4.13(a)(4) and whether all natural person QEPs should be included for purposes of the rule.

The comments received in response to this request were mixed, with some stating that the proposed investor eligibility qualifications would be appropriate, yet others claiming that the proposal was unnecessarily restrictive and that the rule should include all natural person QEPs—*i.e.*, natural persons who are QEPs under *either* Rule 4.7(a)(2) *or* (a)(3). Inasmuch as Rule 4.13(a)(4) does not contain any trading limits whatsoever, and the operators in question are not ''otherwise regulated'', the Commission is not persuaded by this latter set of comments and, accordingly, it is adopting the rule as proposed.

4. Alternative Proposal for Relief

As an alternative to the foregoing registration exemption proposals for certain CPOs, and to various registration exemption proposals for certain CTAs under Rule 4.14, the Commission sought comment on adoption of a notice registration scheme that would be comparable to the proposed exemption approach with respect to information required to be filed with the Commission and compliance with Part 4 requirements.[38] Specifically, the Commission asked for comment on whether a notice registration scheme could make it more clear to the public and other regulatory authorities that this group of CPOs and CTAs remained subject to the CFTC's jurisdiction under the Act, the Bank Secrecy Act and other statutes, while providing the same amount of regulatory relief as the proposed exemption.

The Commission received several comments in response to this request, each of which recommended that the Commission not adopt a notice registration scheme. The arguments advanced to the Commission were that such a scheme: (1) Might confuse prospective pool participants into thinking that a notice registrant was subject to more oversight and regulation than it actually would be; [39] (2) was unnecessary because CPOs exempt from registration remain subject to CFTC jurisdiction, which includes the antifraud provisions of the Act and the Commission's rules; and (3) would not improve the information available to the Commission but, rather, would raise recordkeeping, supervision and audit requirement issues for all concerned. In light of these comments, the Commission is not adopting a notice registration scheme.

C. Amendments to Rule 4.14: Adding and Expanding CTA Registration Exemptions

1. New Rule 4.14(a)(8)(i)(D): Adding an Exemption Where Advice Is to Rules 4.13(a)(3) and (a)(4) Pools

As proposed and as adopted, new Rule 4.14(a)(8)(i)(D) provides CTA registration relief for advisors to commodity pools that meet the requirements of the new CPO registration exemptions based on, among other things, trading limits, as discussed above.[40] Several persons have asked whether the Commission intends that this CTA registration exemption will define the term ''primarily'' as used in section 4m(3) of the Act,[41] which also provides an exemption from CTA registration, for any CTA that—

> is registered with the [SEC] as an investment adviser whose business does not consist *primarily* of acting as a (CTA) * * * and that does not act as a (CTA) to any investment trust, syndicate or similar form of enterprise that is engaged *primarily* in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility. (Emphasis added.)

The Commission does not intend that the CTA registration exemption in Rule 4.14(a)(8)(i)(D) have any bearing whatsoever on the meaning of the term ''primarily'' in section 4m(3). Rather, the Commission intends to employ the criteria of Rule 4.14(a)(8)(i)(D) solely for the purposes of the rule itself.[42]

2. New Rule 4.14(a)(10): Counting Legal Organizations as a Single ''Person''

As the Commission explained in the Proposing Release, the single ''persons'' specified in Rule 4.14(a)(10) for the purposes of section 4m(1) of the Act are patterned after the single ''clients'' specified in Rule 203(b)(3) under the IAA.[43] By this release, and at the request of a commenter, the Commission confirms that it intends to follow interpretations of Rule 203(b)(3) issued by the SEC and its staff. As stated above in connection with the discussion of Rules 4.13(a)(3) and 4.13(a)(4), however, the Commission has the right to provide its own interpretations concerning the counting of single ''persons,'' if such action is found to be necessary to effectuate the Act and the Commission's regulations, and, further, the Commission expects that it would exercise this right infrequently.[44]

D. Amendments to Rules 4.21, 4.22 and 4.31

1. Amended Rules 4.21(a) and 4.31(a): Permitting Communications Prior to Disclosure Document Delivery

Commission Rules 4.21 and 4.31 respectively require CPOs and CTAs to provide a Disclosure Document to their prospective pool participants and advisory clients. The Commission proposed to amend these rules to provide that the Disclosure Document must be delivered by no later than the time a CPO delivers a subscription agreement for the pool for which it is soliciting or a CTA delivers an advisory agreement for the trading program for which it is soliciting.[45] To ensure achievement of the purpose of the Disclosure Document—*i.e.*, that prospective investors are fully informed about all material facts before committing their funds—, and consistent with the Roundtable comments, these proposed rule

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[36] *See* 68 FR 12622, 12627.

[37] *See* 67 FR 68785, 68787–88.

[38] *See* 68 FR 12622, 12628.

[39] *Cf.* Rule 3.10(a)(3), which generally provides for notice registration as a futures commission merchant or introducing broker for certain brokers and dealers that are registered with the SEC, are members of a registered national securities association, and solely trade security futures products.

[40] *See* the discussion of Rule 4.13(a)(3)(ii) in II. B. 2. above.

[41] 7 U.S.C. 6m(3) (2000).

[42] The CFMA added section 4m(3) to the Act and a corresponding Section 203(b)(6) to the Investment Advisers Act of 1940 (IAA), which provides an exemption from registration for:

> any investment adviser that is registered with the (CFTC) as a (CTA) whose business does not consist primarily of acting as an investment adviser, . . . and that does not act as an investment adviser to—
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> (A) (a registered) investment company; or
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> (B) a company which has elected to be a business development company . . . and has not withdrawn its election.

[43] *See* 66 FR 12622, 12628–29.

[44] *See* II.B.1. above. The Commission also has clarified in Rule 4.14(a)(10) as adopted that the source of this exemption is section 4m(1).

Compare CFTC v. *Savage,* 611 Fed. 270 (9th Cir. 1979). There, the Court held that section 4m(1) includes ''within the persons to whom an advisor 'furnishes' advice customers of an advisee when the advisor knows or should know that advice he gives is directly passed to those customers.'' *Id.* at 280. The advisee in *Savage* was a corporation ''*i.e.*, a legal organization—that was registered as a futures commission merchant with the Commission. Rule 4.14(a)(10) counts a legal organization as a single ''person'' where the organization is receiving commodity interest trading advice based on *its* investment objectives. Inasmuch as the advisee in *Savage* was not receiving advice based on its investment objectives but, rather, as a mere conduit for others to receive advice, it would not be counted as a single ''person'' under Rule 4.10(d).

[45] *See* 68 FR 12622, 12629.

amendments would have been subject to the proviso that ''any material distributed in advance of the delivery of the Disclosure Document is consistent with *or amended by* the information contained in the Disclosure Document and with the obligations of the [CPO or CTA] under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority.'' (Emphasis added.)

One of the commenters on these proposed rule amendments objected to this proviso, claiming that the phrase ''or amended by'' could be read to mean that information does not have to be consistent with the Disclosure Document at the time the information is distributed, as long as it is corrected when the Disclosure Document is delivered. To avoid any such misunderstanding, Rules 4.21(a) and 4.31(a) as adopted now further provide that:

> In the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to its (subscription or advisory agreement, as the case may be) being accepted.

Another commenter on these proposed rule amendments asked for clarification on the permissibility of distributing performance materials in advance of delivery of a Disclosure Document. In response, the Commission states that performance information may be distributed in advance of the Disclosure Document, provided it is presented in the format specified by the CFTC.[46]

In connection with adopting these amendments to Rules 4.21 and 4.31, the Commission has reviewed its July 1997 interpretation regarding electronic delivery of CPO and CTA Disclosure Documents (the ''1997 Interpretation'')[47] for the purpose of considering whether it should revise certain aspects of that interpretation, such as the requirement that visitors to a CPO or CTA Web site must view a summary risk disclosure statement before they may access performance information. The Commission notes that the 1997 Interpretation was premised on the now obsolete requirement in Rules 4.21 and 4.31 that a Disclosure Document respectively be delivered on or before the date that a CPO solicited, accepted or received funds or other property from a prospective pool participant, or a CTA solicited or entered into an advisory agreement with a prospective client. Accordingly, the provisions of amended Rules 4.21 and 4.31 supercede the 1997 Interpretation.

2. New Rule 4.22(i): Distributing Account Statements and Annual Reports Electronically

The Commission is amending Rule 4.22 by adding a new paragraph (i) to the rule to establish that, as proposed, a CPO may distribute periodic Account Statements to pool participants by electronic means, and, in response to favorable comments, a CPO may so distribute Annual Reports.[48] Also in response to comments, for greater flexibility the rule as adopted does not specify each and every step a CPO must take to furnish financial information to pool participants. What the rule does require is that prior to transmission of any Account Statement or Annual Report to a pool participant by means of electronic media, a CPO must disclose to the participant that it intends to distribute these documents electronically, absent objection from the participant, which objection, if any, the participant must make no later than 10 business days following its receipt of the disclosure.[49]

E. Amendments to Rules 4.5, 4.7, 4.12, 4.13, 4.14 and 4.22: Conforming Signature Requirements

The Commission proposed to amend certain of the part 4 rules that list the CPO and CTA signatories who may sign various required documents.[50] As the Commission explained:

> Rules 4.7(d), 4.12(b), 4.13(b), and 4.22(h) provide that the documents required thereunder must be signed by a CPO or CTA as follows: if it is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer.
>
> Upon review of this list of permitted signatories, the Commission believes that it may be unnecessarily restrictive in that it leaves no room for other organizational structures under which CPOs and CTAs operate—*e.g.*, limited liability companies. Accordingly, the Commission is proposing to amend Rules 4.7(d), 4.12(b) and 4.13(b) to provide that the documents required thereunder must be signed by a duly authorized representative of the CPO or CTA. This would be consistent with existing signature requirements under Rules 4.5 and 4.14. * * * However, because the document required under Rule 4.22(h) pertains to the accuracy and completeness of certain financial reports (*i.e.*, commodity pool Account Statements and Annual Reports), the Commission specifically is proposing that this oath or affirmation be signed by a representative duly authorized to bind the pool operator.[51]

The Commission received two comments on these proposed rule amendments. The first comment recommended that the same standard be applied to each situation where documents are required to be executed. The Commission agrees with this comment, and, accordingly, is adopting as the suggested ''universal standard'' the requirement that part 4 documents be manually executed by ''a representative duly authorized to bind'' an eligible person, CPO or CTA. Specifically, this requirement is now found in Rules 4.5(f)(2), 4.7(d)(1)(vii), 4.12(b)(3)(vi), 4.13(b)(1)(iii), 4.14(a)(8)(iii)(A)(*3*) and 4.22(h)(3).

The second comment recommended that the list of permitted signatories be expanded, such that the applicable rules would specifically provide that ''any listed principal'' is a permitted signatory. The Commission does not agree with this comment, because not all principals of a CPO or a CTA may in fact be duly authorized to bind the CPO or CTA.[52]

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[46] *See, e.g.*, Rules 4.25 and 4.35, which establish performance disclosure formats for CPOs and CTAs, respectively; Rule 4.41, which concerns advertising by CPOs, CTAs and their principals; and 46 FR 26004, 26012 (May 8, 1981), wherein the Commission provided guidance on the advertising of past performance results. *See also,* Rule 156 under the '33 Act, 17 CFR 230.156 (2003), which sets forth what the SEC would consider ''materially misleading'' in the context of investment company sales literature.

[47] *See,* ''Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials,'' 62 FR 39104 (July 22, 1997). In that interpretation, the Commission made provision for delivery of required Disclosure Documents in the context of, for example, CPO and CTA Internet Web sites by requiring that a summary risk disclosure be given along with a hyperlink or other comparable ready access to the full Disclosure Document, *in lieu* of requiring that the CPO or CTA make a Web site viewer scroll through the entire Disclosure Document before viewing any material that might constitute a solicitation by the CPO or CTA.

[48] *See* 68 FR 12622, 12629–30.

[49] In light of this action, the Commission may review the procedures in Rule 1.33 and 1.46 it previously adopted for electronic transmission of certain information by FCMs to their customers, with a view towards conforming them to new Rule 4.22(i).

[50] 68 FR 12622, 12630.

[51] *Id.*

[52] Rule 4.10(e)(1) provides that for the purposes of part 4, the term ''principal'' has the same meaning as the term ''principal'' under Rule 3.1(a).

Rule 3.1(a) generally defines the term ''principal'' of an entity to include, among others, the following: executive officers; persons in charge of a function subject to Commission regulation; persons who have the power to exercise a controlling influence over the entity's activities that are subject to Commission regulation; ten percent or greater shareholders; and persons who have contributed ten percent or more of the capital.

F. Effect of Final Rulemaking

1. Effect on Prior Claimants

The amendments to Rules 4.5, 4.13 and 4.14 that the Commission is publishing today do not require a person who previously has claimed relief under Rule 4.5 or the Temporary No-Action Relief [53] to re-file its claim in order to maintain that relief or to trade in accordance with amended Rule 4.5, 4.13 or 4.14. Moreover, where the person continues to comply with the commodity interest trading limitations applicable to that previously claimed relief, it does not need to take any other action to take advantage of the exemptions being made available by these amendments.[54] The person nonetheless remains subject to all other applicable requirements of Rule 4.5, 4.13 or 4.14, as the case may be, to all other applicable provisions of the Act and the Commission's rules thereunder, and to any and all obligations under any other applicable Federal and State statutory and regulatory authorities that may result from its activities under these exemptions.

2. Effect of Withdrawal From CPO Registration on Rule 4.22(c) Annual Report Requirement

A CPO who has withdrawn from registration in order to claim the Temporary No-Action Relief or who withdraws from registration in order to claim relief under Rule 4.13(a)(3) or (a)(4) adopted today nonetheless remains subject to the Annual Report requirement of Rule 4.22(c), as has been the case with CPOs who have withdrawn from registration for any other reason. This is because the Commission believes that when a CPO leaves direct CFTC oversight, the CPO's pool participants should get all of the information they are entitled to up to that time. The Commission nonetheless is aware that in past cases its staff has worked with withdrawing CPOs in appropriate cases to provide these persons with flexibility in complying with Rule 4.22(c). By this **Federal Register** release, the Commission instructs its staff to continue this practice.

G. Continued Availability of No-Action Relief From Commission Staff

The Commission is aware that, notwithstanding the rules it is adopting today, there may be persons that do not meet the criteria of Rule 4.5 for eligible persons, section 4m(3) of the Act or Rule 4.13 for CPOs, or section 4m(1) of the Act or Rule 4.14 for CTAs but, that, nonetheless, under their particular facts or circumstances, merit relief. The Commission also is aware that, in the past, its staff has provided no-action relief from the criteria of Rule 4.5 and from the registration requirement of section 4m(1) of the Act on a case-by-case basis. Consistent with that practice, the Commission directs its staff to continue to issue such relief in appropriate cases.[55]

III. Past Performance Presentation Issues

On March 13, 2003, the Commission published in the **Federal Register** [56] proposed rule amendments regarding the computation and presentation of rate of return information and other disclosures concerning past performance of accounts over which a CTA has had trading authority (Performance Proposal). In the Performance Proposal, the Commission also sought comment on whether a core principle should replace detailed performance requirements. The Commission has adopted a core principle approach regarding presentation of partially funded accounts,[57] but noted in the release adopting the core principle that proposed changes relating to certain performance issues with application beyond the partially funded account situation would be addressed separately.[58] These issues include: (1) Disclosure of the range of rates of return for closed accounts, or other measures of variability in returns experienced by clients for the offered trading program; (2) computation of program draw-down information on a composite basis; and (3) methods to account for the effect of intramonth additions and withdrawals in the computation of rate of return.

A. Range of Rates of Return for Closed Accounts

The Commission proposed to revise Rule 4.35(a)(1)(viii) to require that the performance capsule for the offered program include, in addition to the number of accounts closed with profits and the number closed with losses, the range of rates of return for the accounts closed with net lifetime profits and accounts closed with net lifetime losses, during the five-year period for which past performance must be disclosed.[59] The Commission based this proposal on its belief that such disclosure would provide important summary information on the variation in returns experienced by individual clients and would be useful to prospective clients considering participation in the CTA's program. Several commenters on the Performance Proposal expressed the belief that this disclosure would not provide useful information to prospective clients, with one commenter noting that the requirement would increase the burden on CTAs without any corresponding benefit.

After consideration of these comments, the Commission has determined that the objective of the proposed change—to enhance the information available to prospective clients about the experience of the CTA's prior clients—continues to be an important goal of the past performance reporting required under Commission rules. However, the Commission believes that it is appropriate to permit flexibility in the manner in which CTAs meet this objective. Accordingly, the Commission is amending Rule 4.35(a)(1)(viii) to require that the performance capsule include a measure of the variability of returns experienced by clients in the offered trading program who both opened and closed their accounts during the period for which performance is required to be disclosed, for accounts closed with positive net lifetime rates of return and for those closed with negative net lifetime rates of return. The Commission notes that this requirement may be satisfied by disclosing the ranges of returns for accounts closed with positive net lifetime rates of return and those closed with negative net lifetime rates of return, as the Commission proposed, or by another method, such as standard deviation, that meets the objective.

The Commission indicated in the Performance Proposal that both the numbers of accounts closed with positive versus negative rates of return, as well as the measure of variability of returns for accounts in each category, must be disclosed only for those accounts that both opened and closed within the required five-year and year-to-date time period. One commenter noted that this change from the prior rule, which required information on all accounts that closed during the required

[53] *See* 68 FR 12622, 12630–32.

[54] Thus, for example, a person who has claimed relief under Rule 4.5 or the Temporary No-Action Relief who continues to comply with the prior limits is not subject to the revised disclosure requirement of Rule 4.5(c)(2)(i) or Rule 4.13(a)(5), as the case may be.

[55] For example, under appropriate circumstances, it may be permissible for a person who seeks to claim an exemption from CPO registration under Rule 4.13(a)(3) to include contracts such as swaps when calculating the ''aggregate net notional value'' criterion of the rule.

[56] 68 FR 12001. The Performance Proposal and comments received may be accessed through *http://www.cftc.gov/foia/comment03/foi03—004_1.htm.*

[57] 68 FR 42964 (July 21, 2003).

[58] *Id.* at 42966.

[59] *See* Rule 4.35(a)(5).

time period even if they were opened more than five years earlier, may result in a reduction in useful information. As it noted in the Performance Proposal, the Commission does not believe that this change will diminish the disclosure of material information to prospective clients, because of the tendency of clients to quickly close accounts that experience large losses. Accounts that experienced strongly negative returns before the five-year time period are likely to have been closed before the end of that time period, and losses experienced as a result of the offered program during the five-year period are likely to have been experienced by an account that both opened and closed during that period. The Commission wishes to make clear that any additional information that the CTA believes is necessary to explain the circumstances affecting the measure of the variability of returns presented in the performance capsule may be provided, pursuant to existing rules regarding supplemental disclosures and material information.[60]

B. Use of Composite Draw-Down

Although the Commission is not adopting the proposed revision to Rules 4.35(a)(1)(v) and (vi) which would have required that the worst monthly and peak-to-valley draw-down amounts be based on the aggregate of nominal account sizes, based on the comments received, the Commission believes it is necessary to clarify the issue of presenting draw-down information on the composite of accounts, rather than on the worst individual account.

Rule 4.10(k) defines the term ''Draw-down'' as ''losses experienced by a pool or account over a specified period.'' Rule 4.10(*l*) defines the term ''Worst peak-to-valley draw-down'' for a pool, account or trading program. In the adopting release for the most recent revisions to the Part 4 rules, the Commission noted that ''the draw-down figures in a composite in a CTA Disclosure Documents are the worst experienced *by any one of the accounts* included in the composite'' (emphasis added).[61] Several commenters expressed concern that composite draw-down would not provide sufficient information as to how bad things might have been for individual accounts. However, other commenters noted that performance of a single account may be misleading due to factors beyond the CTA's control, such as the client's determination of when to open or close the account. Another commenter stated that the purpose of draw-down disclosure in performance capsules is to highlight the historical risk and volatility of a particular trading program, not the general risk of futures trading, which is adequately addressed by other rules.

As noted in the Performance Proposal, a variety of factors, including, but not limited to, differences due to trade execution, fees, commissions, and the timing of opening or closing accounts, may have an impact on the returns for individual accounts. The effect of these factors must be considered by the CTA in the development of its composite performance tables and any material differences among the accounts in the composite must be discussed.[62] The Commission continues to believe that for a performance table that complies with the Commission's rules on use of composites, disclosure of draw-down information on a composite basis would not be misleading. The Commission therefore confirms that presentation of monthly and peak-to-valley draw-down information on a composite basis for performance tables that comply with Rule 4.35(a)(3) will be acceptable. CTAs remain subject to the requirement of Rule 4.34(o) to disclose all material information to existing or prospective clients even if such information is not specifically required by these regulations.

C. Treatment of Additions and Withdrawals in Computing Rate of Return

The changes to the rate of return computation in the Performance Proposal would have codified, in a streamlined fashion, several methods of accounting for additions and withdrawals in computing rate of return that were permitted by the Commission's 1991 Advisory.[63] In addition to the method currently required by Rule 4.35(a)(6)(i)(F), these methods would include daily compounding and time-weighting of additions and withdrawals. However, the Only Accounts Traded Method, which had been permitted by the 1991 Advisory, was not included as an option CTAs could choose prospectively due to concerns that it allows for accounts to be excluded entirely from the rate of return calculation. One commenter noted that CTAs can reach the same result as the proposed daily compounded rate of return when the calculation is compounded based on each sub-period in which an addition or withdrawal is made. Two commenters requested that CTAs continue to be permitted to exclude from the return calculation accounts that opened or closed intramonth, to avoid material distortions that can occur. Although the Commission adopted a core principle for partially funded account performance and therefore did not implement the proposed changes to the rate of return calculation, based on the comments received on the Performance Proposal, the Commission believes it is appropriate to provide guidance regarding the treatment of additions and withdrawals in computing rate of return.

D. New Appendix B to Part 4

New appendix B to part 4 provides guidance concerning alternate methods by which CPOs and CTAs may calculate the rate of return information required by Rules 4.25(a)(7)(i)(F) and 4.35(a)(6)(i)(F). Performance computed in accordance with any of the alternative methods described in the 1991 Advisory for periods prior to the effective date of these rule changes would not need to be revised. However, the 1991 Advisory is superseded prospectively by Appendix B adopted herein.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[64] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[65] With respect to CPOs, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2).[66] Therefore, the requirements

[60] *See* Rules 4.34(n) and 4.34(*o*).

[61] 60 FR 38146, 38163 (July 25, 1995).

[62] Rule 4.35(a)(3) states:

(i) Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program may be presented in composite form on a program-by-program basis. * * *

(ii) Accounts that differ materially with respect to rate of return may not be presented in the same composite.

(iii) The commodity trading advisor must discuss all material differences among the accounts included in a composite.

[63] ''Adjustments for Additions and Withdrawals to Computation of Rate of Return in Performance Records of Commodity Pool Operators and Commodity Trading Advisors,'' 56 FR 8109 (Feb. 27, 1991). Rule 4.35(a)(6) states that performance information may be calculated as specified therein ''or by a method otherwise approved by the Commission.''

[64] 5 U.S.C. 601 *et seq.*

[65] 47 FR 18618 (April 30, 1982).

[66] *Id.* at 18619–20.

of the RFA do not apply to CPOs who do not meet those criteria. With respect to CTAs, the Commission has previously stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the proposal.[67] The Commission believes that the rules it is adopting today will not place any burdens, whether new or additional, on CPOs and CTAs who would be affected hereunder. This is because these rules provide registration relief for more CPOs and CTAs and, for CPOs and CTAs who are not eligible for that relief, they reduce, clarify, streamline and simplify existing requirements.

The Commission's definitions of small entities do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, *arguendo*, that Rule 4.5 eligible persons or qualifying entities would be small entities for purposes of the RFA, the Commission believes that the amendment to Rule 4.5 it is adopting today will not have a significant economic impact on them because it will permit greater operational flexibility for persons currently claiming relief under the rule, and it will make relief under the rule available to more persons (each of whom will only have to file a notice to be relieved from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs).

The Commission did not receive any comments on its analysis of the application of the RFA to the instant Part 4 rule amendments.

B. Paperwork Reduction Act

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995,[68] the Commission has submitted a copy of these amendments to part 4 to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments to the part 4 rules are intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While certain of the amendments are expected to lessen the burden imposed upon CPOs and CTAs, any exclusion or exemption of persons from regulatory requirements are based on such factors as financial sophistication of pool participants and advisory clients or a limited level of trading in the commodity interest markets. Accordingly, the amendments should have no effect on the Commission's ability to protect market participants and the public. Also, there should be no decrease in the protection of market participants and the public where the amendments relax existing requirements under the Act and the Commission's rules in order to be consistent with existing requirements under the federal securities laws and the SEC's rules.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by removing barriers to participation in the commodity interest markets, resulting in greater liquidity and market efficiency.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. *Sound risk management practices.* The proposed amendments should increase the available range of risk management alternatives for Rule 4.5 eligible persons, as well as for CPOs and CTAs.

5. *Other public interest considerations.* The amendments also take into account certain effects of legislative changes (*e.g.*, in the case of exemption for registered investment advisers) and the passage of time (*e.g.*, revising the contribution limit for the small commodity pool exemption and permitting electronic delivery of pool Annual Reports and Account Statements).

After considering these factors, the Commission has determined to adopt the Part 4 rule amendments discussed above. The Commission did not receive any comments relative to its analysis of the cost-benefit provision.

D. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' Each of the amendments to Rules 4.5, 4.7, 4.12, 4.13, 4.14, 4.21, 4.22 and 4.31 the Commission is publishing today ''grants or recognizes an exemption or relieves a restriction.'' Accordingly, the Commission has determined to make the amendments to Rules 4.5, 4.7, 4.12, 4.13, 4.14, 4.21, 4.22 and 4.31.

List of Subjects in 17 CFR Part 4

Advertising, Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options, Customer protection, Reporting and Recordkeeping.

■ For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, , 6l, 6m, 6n, 6o, 12a and 23.

■ 2. Section 4.5 is amended by:
■ a. Removing paragraph (c)(2)(i);
■ b. Removing paragraph (c)(2)(ii);

[67] *Id.* at 18620.

[68] 44 U.S.C. 3507(d).

■ c. Redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(i) and revising redesignated paragraph (c)(2)(i);
■ d. Redesignating paragraph (c)(2)(iv) as paragraph (c)(2)(ii);
■ e. Revising paragraph (f)(2); and
■ f. Adding new paragraph (g).

The revisions and addition read as follows:

§ 4.5 Exclusion from the definition of the term ''commodity pool operator.''

* * * * *

(c) * * *

(2) * * *

(i) Will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated by a person who has claimed an exclusion from the definition of the term ''commodity pool operator'' under the Act and, therefore, who is not subject to registration or regulation as a pool operator under the Act; *Provided,* that such disclosure is made in accordance with the requirements of any other federal or state regulatory authority to which the qualifying entity is subject; and

* * * * *

(f) * * *

(2) Manually signed by a representative duly authorized to bind a person specified in paragraph (a) of this section; and

* * * * *

(g) The filing of a notice of eligibility or the application of ''non-pool status'' under this section will not affect the ability of a person to qualify for an exemption from registration as a commodity pool operator under § 4.13 in connection with the operation of another trading vehicle that is not covered under this § 4.5.

3. Section 4.7 is amended by revising paragraphs (a)(2)(vi), (a)(3)(viii) and (d)(1)(vii), to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

(a) * * *

(2) * * *

(vi) A ''qualified purchaser'' as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (the ''Investment Company Act'');

* * * * *

(3) * * *

(viii) A corporation, Massachusetts or similar business trust, or partnership, limited liability company or similar business venture, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of either participating in the exempt pool or opening an exempt account;

* * * * *

(d) * * *

(1) * * *

(vii) Be manually signed by a representative duly authorized to bind the commodity pool operator or commodity trading advisor;

* * * * *

■ 4. Section 4.12 is amended by revising paragraph (b)(3)(vi) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(3) * * *

(vi) Be manually signed by a representative duly authorized to bind the pool operator; and

* * * * *

■ 5. Section 4.13 is amended by:
■ a. Adding introductory text;
■ b. Removing the ''or'' at the end of paragraph (a)(1)(iv);
■ c. Revising paragraph (a)(2);
■ d. Adding new paragraphs (a)(3), (a)(4) and (a)(5);
■ e. Revising paragraph (b);
■ f. Redesignating paragraph (c) and paragraph (d) as paragraphs (d) and (e) and revising newly redesignated paragraphs (d) and (e);
■ g. Adding new paragraph (c);
■ h. Adding new paragraph (f).

The additions and revisions read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

This section is organized as follows: Paragraph (a) of this section specifies the criteria that must be met to qualify for exemption from registration under this section; paragraph (b) of this section governs the notice that must be filed to claim exemption from registration; paragraph (c) of this section sets forth the continuing obligations of a person who has claimed exemption under this section; paragraph (d) of this section specifies information certain persons must provide if they subsequently register; and paragraph (e) of this section specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration hereunder.

(a) * * *

(2)(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed $400,000.

(iii) For the purpose of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these participants;

(C) The spouse of any participant specified in paragraph (a)(2)(iii)(A) or (B) of this section; and

(D) Any relative of a participant specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such participant;

(3) For each pool for which the person claims exemption from registration under this paragraph (a)(3):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) At all times, the pool meets one or the other of the following tests with respect to its commodity interest positions, including positions in security futures products, whether entered into for *bona fide* hedging purposes or otherwise:

(A) The aggregate initial margin and premiums required to establish such positions, determined at the time the most recent position was established, will not exceed 5 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such 5 percent; or

(B) The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph:

(*1*) The term ''notional value'' shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the

number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit; and

(*2*) The person may net contracts with the same underlying commodity across designated contract markets, registered derivatives transaction execution facilities and foreign boards of trade; and

(iii) The person reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(3) of this section), that each person who participates in the pool is:

(A) An ''accredited investor,'' as that term is defined in § 230.501 of this title;

(B) A trust that is not an accredited investor but that was formed by an accredited investor for the benefit of a family member;

(C) A ''knowledgeable employee,'' as that term is defined in § 270.3c-5 of this title; or

(D) A ''qualified eligible person,'' as that term is defined in § 4.7(a)(2)(viii)(A) of this chapter; and

(iv) Participations in the pool are not marketed as or in a vehicle for trading in the commodity futures or commodity options markets; *Provided,* That nothing in paragraph (a)(3) of this section shall prohibit the person from claiming an exemption under this section if it additionally operates one or more pools for which it meets the criteria of paragraph (a)(4) of this section; or

(4) For each pool for which the person claims exemption from registration under this paragraph (a)(4):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) The person reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(4) of this section), that:

(A) Each natural person participant (including such person's self-directed employee benefit plan, if any), is a ''qualified eligible person,'' as that term is defined in § 4.7(a)(2); and

(B) Each non-natural person participant is a ''qualified eligible person,'' as that term is defined in § 4.7, or an ''accredited investor,'' as that term is defined in § 230.501(a)(1)-(3), (a)(7) and (a)(8) of this title; *Provided,* That nothing in paragraph (a)(4) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools that meet the criteria of paragraph (a)(3) of this section.

(5)(i) Eligibility for exemption under this section is subject to the person furnishing in writing to each prospective participant in the pool:

(A) A statement that the person is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and

(B) A description of the criteria pursuant to which it qualifies for such exemption from registration.

(ii) The person must make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

(b)(1) Any person who desires to claim the relief from registration provided by this section must file a notice of exemption from commodity pool operator registration with the National Futures Association (ATTN: Director of Compliance). The notice must:

(i) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the person claiming the exemption and the name of the pool for which it is claiming exemption;

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.*, § 4.13(a)(1), (a)(2), (a)(3), or (a)(4), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

(iii) Be manually signed by a representative duly authorized to bind the person.

(2) The person must file the notice by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided*, That where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in writing that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

(3) The notice will be effective upon filing, provided the notice is materially complete.

(4) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, file a supplemental notice with the National Futures Association to that effect which, if applicable, includes such amendments as may be necessary to render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the pool operator becomes aware of the occurrence of such event.

(c)(1) Each person who has filed a notice of exemption from registration under this section must:

(i) Make and keep all books and records prepared in connection with its activities as a pool operator for a period of five years from the date of preparation;

(ii) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(iii) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section.

(2) In the event the person distributes an annual report to participants in the pool for which it has filed the notice, the annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 of this chapter as applicable.

(3) Each person who has filed a notice of exemption from registration pursuant to paragraph (a)(1) or (a)(2) of this section must:

(i) Promptly furnish to each participant in the pool a copy of each monthly statement for the pool that the pool operator received from a futures commission merchant pursuant to § 1.33 of this chapter; and

(ii) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement.

(d) Each person who applies for registration as a commodity pool operator subsequent to claiming relief under paragraph (a)(1) or (a)(2) of this section must include with its application the financial statements and other information required by § 4.22(c)(1) through (5) for each pool that it has operated as an operator

exempt from registration. That information must be presented and computed in accordance with generally accepted accounting principles consistently applied. If the person is granted registration as a commodity pool operator, it must comply with the provisions of this part with respect to each such pool.

(e)(1) Subject to the provisions of paragraph (e)(2) of this section, if a person who is eligible for exemption from registration as a commodity pool operator under this section nonetheless registers as a commodity pool operator, the person must comply with the provisions of this part with respect to each commodity pool identified on its registration application or supplement thereto.

(2) If a person operates one or more commodity pools described in paragraph (a)(3) or (a)(4) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) or (a)(4) of this section; *Provided*, That the person:

(i) Furnishes in writing to each prospective participant in a pool described in paragraph (a)(3) or (a)(4) of this section that it operates:

(A) A statement that it will operate the pool as if the person was exempt from registration as a commodity pool operator;

(B) A description of the criteria pursuant to which it will so operate the pool; and

(ii) Complies with paragraph (c) of this section.

(f) The filing of a notice of exemption from registration under this section will not affect the ability of a person to qualify for exclusion from the definition of the term ''commodity pool operator'' under § 4.5 in connection with its operation of another trading vehicle that is not covered under this § 4.13.

■ 6. Section 4.14 is amended by:
■ a. Adding introductory text;
■ b. Revising paragraph (a)(8);
■ c. Removing the period and adding a semi-colon followed by the word ''or'' at the end of paragraph (a)(9)(ii);
■ d. Adding new paragraph (a)(10); and
■ e. Revising paragraph (c).

The additions and revisions read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

This section is organized as follows: Paragraph (a) of this section specifies the criteria that must be met to qualify for exemption from registration under this section, including the notice of exemption from registration and continuing obligations of persons who have claimed exemption under paragraph (a)(8) of this section; paragraph (b) of this section concerns ''cash market transactions''; and paragraph (c) of this section specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration hereunder.

(a) * * *

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term ''investment adviser'' pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940, *Provided*, That:

(i) The person's commodity interest trading advice is directed solely to, and for the sole use of, one or more of the following:

(A) ''Qualifying entities,'' as that term is defined in § 4.5(b), for which a notice of eligibility has been filed;

(B) Collective investment vehicles that are excluded from the definition of the term commodity ''pool'' under § 4.5(a)(4); and

(C) Commodity pools that are organized and operated outside of the United States, its territories or possessions, where:

(*1*) The commodity pool operator of each such pool has not so organized and is not so operating the pool for the purpose of avoiding commodity pool operator registration;

(*2*) With the exception of the pool's operator, advisor and their principals, solely ''Non-United States persons,'' as that term is defined in § 4.7(a)(1)(iv), will contribute funds or other capital to, and will own beneficial interests in, the pool; *Provided*, That units of participation in the pool held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10 percent of the beneficial interest of the pool;

(*3*) No person affiliated with the pool conducts any marketing activity for the purpose of, or that could reasonably have the effect of, soliciting participation from other than Non-United States persons; and

(*4*) No person affiliated with the pool conducts any marketing activity from within the United States, its territories or possessions; and

(D) A commodity pool operator who has claimed an exemption from registration under § 4.13(a)(3) or 4.13(a)(4), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) or 4.13(a)(4) as if it were not so registered;

(ii) The person:

(A) Provides commodity interest trading advice solely incidental to its business of providing securities or other investment advice to qualifying entities, collective investment vehicles and commodity pools as described in paragraph (a)(8)(i) of this section; and

(B) Is not otherwise holding itself out as a commodity trading advisor.

(iii)(A) A person who desires to claim the relief from registration provided by this § 4.14(a)(8) must file a notice of exemption from commodity trading advisor registration with the National Futures Association (ATTN: Director of Compliance). The notice must:

(*1*) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the trading advisor claiming the exemption;

(*2*) Contain the section number pursuant to which the advisor is filing the notice (*i.e.*, § 4.14(a)(8)(i) or (a)(8)(ii), or both (a)(8)(i) and (a)(8)(ii)) and represent that it will provide commodity interest advice to its clients in accordance with the criteria of that paragraph or paragraphs; and

(*3*) Be manually signed by a representative duly authorized to bind the person.

(B) The person must file the notice by no later than the time it delivers an advisory agreement for the trading program pursuant to which it will offer commodity interest advice to a client; *Provided*, That where the advisor is registered with the Commission as a commodity trading advisor, it must notify its clients in writing that it intends to withdraw from registration and claim the exemption and must provide each such client with a right to terminate its advisory agreement prior to the person filing a notice of exemption from registration.

(C) The notice will be effective upon filing, provided the notice is materially complete.

(D) Each person who has filed a notice of registration exemption under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, file a supplemental notice with the National Futures Association to that effect which, if applicable, includes such amendments as may be necessary to

render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

(iv) Each person who has filed a notice of registration exemption under this § 4.14(a)(8) must:

(A)(*1*) Make and keep all books and records prepared in connection with its activities as a trading advisor, including all books and records demonstrating eligibility for and compliance with the applicable criteria for exemption under this section, for a period of five years from the date of preparation; and

(*2*) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(B) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section;

* * * * *

(10) If, as provided for in section 4m(1) of the Act, during the course of the preceding 12 months, it has not furnished commodity trading advice to more than 15 persons and it does not hold itself out generally to the public as a commodity trading advisor.

(i) For the purpose of paragraph (a)(10) of this section, the following are deemed a single person:

(A) A natural person, and:

(*1*) Any minor child of the natural person;

(*2*) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(*3*) All accounts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries; and

(*4*) All trusts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries;

(B)(*1*) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(10)(i)(A)(*4*) of this section), or other legal organization (any of which are referred to hereinafter as a ''legal organization'') that receives commodity interest trading advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an ''owner''); and

(*2*) Two or more legal organizations referred to in paragraph (a)(10)(i)(B)(*1*) of this section that have identical owners.

(ii) *Special Rules.* For the purpose of paragraph (a)(10) of this section:

(A) An owner must be counted in its own capacity as a person if the commodity trading advisor provides advisory services to the owner separate and apart from the advisory services provided to the legal organization; *Provided,* That the determination that an owner is a client will not affect the applicability of paragraph (a)(10) of this section with regard to any other owner;

(B)(*1*) A general partner of a limited partnership, or other person acting as a commodity trading advisor to the partnership, may count the limited partnership as one person; and

(*2*) A manager or managing member of a limited liability company, or any other person acting as a commodity trading advisor to the company, may count the limited liability company as one person.

(C) A commodity trading advisor that has its principal office and place of business outside of the United States, its territories or possessions must count only clients that are residents of the United States, its territories and possessions; a commodity trading advisor that has its principal office and place of business in the United States or in any territory or possession thereof must count all clients.

(iii) *Holding Out.* Any commodity trading advisor relying on paragraph (a)(10) of this section shall not be deemed to be holding itself out generally to the public as a commodity trading advisor, within the meaning of section 4m(1) of the Act, solely because it participates in a non-public offering of interests in a collective investment vehicle under the Securities Act of 1933.

* * * * *

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if a person who is eligible for exemption from registration as a commodity trading advisor under this section nonetheless registers as a commodity trading advisor, the person must comply with the provisions of this part with respect to those clients for which it could have claimed an exemption from registration hereunder.

(2) If a person provides commodity interest trading advice to a client described in paragraph (a) of this section and to a client for which it must be, and is, registered as a commodity trading advisor, the person is exempt from the requirements applicable to a registered commodity trading advisor with respect to the clients so described; *Provided,* That the person furnishes in writing to each prospective client described in paragraph (a) of this section a statement that it will provide commodity interest trading advice to the client as if it was exempt from registration as a commodity trading advisor.

■ 7. Section 4.21 is amended by revising paragraph (a) to read as follows:

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool; *Provided,* That any information distributed in advance of the delivery of the Disclosure Document to a prospective participant is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity pool operator under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority; *Provided, further*, That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to its subscription being accepted by the pool operator.

(2) For the purpose of the Disclosure Document delivery requirement, including any offering memorandum delivered pursuant to § 4.7(b)(1) or 4.12(b)(2)(i), the term ''prospective pool participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool.

* * * * *

■ 8. Section 4.22 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding new paragraph (a)(4),

■ c. Revising paragraph (c) introductory text,

■ d. Adding a new paragraph (c)(6),

■ e. Revising paragraph (h)(1),

■ f. Revising paragraph (h)(3),

■ g. Adding new paragraph (i) and
■ h. Adding new paragraph (j).

The revisions and additions read as follows:

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

* * * * *

(4) For the purpose of the Account Statement delivery requirement, including any Account Statement distributed pursuant to § 4.7(b)(2) or 4.12(b)(2)(ii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested.

* * * * *

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must file a copy of the Report with the National Futures Association, within 90 calendar days after the end on the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however*, That if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be signed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(6) For the purpose of the Annual Report distribution requirement, including any annual report distributed pursuant to § 4.7(b)(3) or 4.12(b)(2)(iii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested; *Provided,* That the Annual Report of such investing pool contain financial statements that include such information as the Commission may specify concerning the operations of the pool in which the commodity pool has invested.

* * * * *

(h)(1) Each Account Statement and Annual Report, including an Account Statement or Annual Report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

* * * * *

(3) Subject to the provisions of paragraph (j) of this section, the oath or affirmation must be manually signed by a representative duly authorized to bind the pool operator.

(i) The Account Statement or Annual Report may be distributed to a pool participant by means of electronic media if the participant so consents; *Provided,* That prior to the transmission of any Account Statement or Annual Report by means of electronic media, a commodity pool operator must disclose to the participant that it intends to distribute electronically the Account Statement or Annual Report or both documents, as the case may be, absent objection from the participant, which objection, if any, the participant must make no later than 10 business days following its receipt of the disclosure.

(j) An Account Statement or Annual Report may contain a facsimile signature, *Provided,* That:

(A) The CPO maintains in accordance with § 4.23 the Account Statement or Annual Report containing the manual signature from which the facsimile signature was made; and

(B) The Annual Report the CPO files with a registered futures association is manually signed.

(ii) For each pool for which the CPO distributes an Account Statement or Annual Report by means of electronic media, the CPO must make and keep in accordance with § 4.23 a manually signed copy of the Statement.

■ 9. Section 4.31 is amended by revising paragraph (a) to read as follows:

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§ 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to direct the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account; *Provided,* That any information distributed in advance of the delivery of the Disclosure Document to a prospective client is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity trading advisor under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority; *Provided further,* That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to the advisory agreement being accepted by the trading advisor.

* * * * *

■ 10. Section 4.35 is amended by revising paragraph (a)(1)(viii) to read as follows:

§ 4.35 Performance disclosures.

(a) General principles.—(1) * * *

(viii) In the case of the offered trading program:

(A)(*1*) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with a positive net lifetime rate of return as of the date the account was closed; and

(*2*) A measure of the variability of returns for accounts that were both opened and closed during the period specified in § 4.35(a)(5) and closed with positive net lifetime rates of return; and

(B)(*1*) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with negative net lifetime rates of return as of the date the account was closed; and

(*2*) A measure of the variability of returns for accounts that were both opened and closed during the period

specified in § 4.35(a)(5) and closed with negative net lifetime rates of return.

(C) The measure of variability required by §§ 4.35(a)(1)(viii)(A)(*2*) and (B)(*2*) may be provided as a range of both positive and negative net lifetime returns, or by any other form of disclosure that meets the objective of disclosure of the variability of returns experienced by clients in the trading program whose accounts were opened and closed during the period specified in § 4.35(a)(5). The net lifetime rate of return shall be calculated as the compounded product of the monthly rates of return for each month the account is open.

* * * * *

■ 11. Appendices A and B are added to part 4 to read as follows:

Appendix A to Part 4—Guidance on the Application of Rule 4.13(a)(3) in the Fund-of-Funds Context

The following provides guidance on the application of the trading limits of Rule 4.13(a)(3)(ii) to commodity pool operators (CPOs) who operate ''fund-of-funds.'' For the purpose of this Appendix A, it is presumed that the CPO can comply with all of the other requirements of Rule 4.13(a)(3). It also is presumed that where the investor fund CPO is relying on its own computations, the investor fund is participating in each investee fund that trades commodity interests as a passive investor, with limited liability (*e.g.*, as a limited partner of a limited partnership or a non-managing member of a limited liability company). Fund-of-funds CPOs who seek to claim exemption from registration under Rule 4.13(a)(1), (a)(2) or (a)(4) may do so without regard to the trading engaged in by an investee fund, because none of the registration exemptions set forth in those rules concerns limits on or levels of commodity interest trading. Persons whose fact situations do not fit any of the scenarios below should contact Commission staff to discuss the applicability of the registration exemption in Rule 4.13(a)(3) to their particular situations.

1. *Situation:* An investor fund CPO allocates the fund's assets to one or more investee funds, none of which meets the trading limits of Rule 4.13(a)(3) and each of which is operated by a registered CPO. It does not allocate any of the investor fund's assets directly to commodity interest trading.

Application: The investor fund CPO may claim relief under Rule 4.13(a)(3) provided the investor fund itself meets the trading limits of Rule 4.13(a)(3).

2. *Situation:* An investor fund CPO allocates the fund's assets to one or more investee funds, each having a CPO who is either: (1) itself claiming exemption from CPO registration under Rule 4.13(a)(3); or (2) a registered CPO that is complying with the trading restrictions of Rule 4.13(a)(3). It does not allocate any of the investor fund's assets directly to commodity interest trading.

Application: The investor fund CPO fund may rely upon the representations of the investee fund CPOs that they are complying with the trading limits of Rule 4.13(a)(3).

3. *Situation:* An investor fund CPO allocates the fund's assets to investee funds, each of which operates under a percentage restriction on the amount of margin or option premiums that may be used to establish its commodity interest positions (whether pursuant to Rule 4.12(b), Rule 4.13(a)(3)(i)(A) or otherwise), by, *e.g.*, contractual agreement. It does not allocate any of the investor fund's assets directly to commodity interest trading.

Application: The CPO of the investor fund may multiply the percentage restriction applicable to each investee fund by the percentage of the investor fund's allocation of assets to that investee fund to determine whether the CPO is operating the investor fund in compliance with Rule 4.13(a)(3)(i)(A).

4. **Situation:** An investor fund CPO allocates the fund's assets to one or more investee funds, and it has actual knowledge of the trading limits and commodity interest positions of the investee funds, *e.g.*, where the CPO or one or more affiliates of the CPO operate the investee funds. (For this purpose, an ''affiliate'' is a person who controls, who is controlled by, or who is under common control with, the CPO.) It does not allocate any of the investor fund's assets directly to commodity interest trading.

Application: The investor fund CPO may aggregate commodity interest positions across investee funds to determine compliance with the trading restrictions of Rule 4.13(a)(3). For this purpose, the aggregate assets of the investee funds would be compared to the aggregate of their commodity interest positions (as to margin or as to net notional value). The investor fund CPO should use the results of this computation to determine its compliance with the trading limits of Rule 4.13(a)(3).

5. *Situation:* An investor fund CPO allocates no more than 50 percent of the fund's assets to investee funds that trade commodity interests (without regard to the level of commodity interest trading engaged in by those investee pools). It does not allocate any of the investor fund's assets directly to commodity interest trading.

Application: The investor fund CPO may claim relief under Rule 4.13(a)(3).

6. *Situation:* An investor fund CPO allocates the fund's assets to both investee funds and direct trading of commodity interests.

Application: The investor fund CPO must treat the amount of investor fund assets committed to such direct trading as a separate pool for purposes of determining compliance with Rule 4.13(a)(3)(i), such that the commodity interest trading of that pool must meet the criteria of Rule 4.13(a)(3)(i) independently of the portion of investor fund assets allocated to investee funds.

Appendix B to Part 4—Adjustments for Additions and Withdrawals in the Computation of Rate of Return

This appendix provides guidance concerning alternate methods by which commodity pool operators and commodity trading advisors may calculate the rate of return information required by Rules 4.25(a)(7)(i)(F) and 4.35(a)(6)(i)(F). The methods described herein are illustrative of calculation methods the Commission has reviewed and determined may be appropriate to address potential material distortions in the computation of rate of return due to additions and withdrawals that occur during a performance reporting period. A commodity pool operator or commodity trading advisor may present to the Commission proposals regarding any alternative method of addressing the effect of additions and withdrawals on the rate of return computation, including documentation supporting the rationale for use of that alternate method.

1. Compounded Rate of Return Method

Rate of return for a period may be calculated by computing the net performance divided by the beginning net asset value for each trading day in the period and compounding each daily rate of return to determine the rate of return for the period. If daily compounding is not practicable, the rate of return may be compounded on the basis of each sub-period within which an addition or withdrawal occurs during a month. For example:

	Account value	Change in value
Start of month	$10,000	+10% ($1,000 profit).
End of 1st acct. period	11,000	$4,000 addition.
Start of 2nd acct. period	15,000	−20% ($3,000 loss).
End of 2nd acct. period	12,000	$2,000 withdrawal.
Start of 3rd acct. period	10,000	+25% ($2,500 profit).
End of month	12,500	

Compounded ROR = [(1 + .1)(1 − .2)(1 + .25)] &− 1 = 10%.

2. Time-weighted method

Time-weighting allows for adjustment to the denominator of the rate of return calculation for additions and withdrawals, weighted for the amount of time such funds were available during the period. Several methods exist for time-weighting, all of which will have the same arithmetic result. These methods include: dividing the net performance by the average weighted account sizes for the month; dividing the net performance by the arithmetic mean of the account sizes for each trading day during the period; and taking the number of days funds were available for trading divided by the total number of days in the period.

Issued in Washington, DC on August 1, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–20094 Filed 8–7–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline, Procaine Penicillin, and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approved status of a new animal drug application (NADA) held by Pennfield Oil Co. The NADA provides for the use of three-way, fixed combination Type A medicated articles containing chlortetracycline, procaine penicillin, and sulfamethazine to make three-way combination drug Type C medicated swine feeds used for growth promotion, increased feed efficiency, and the management of several bacterial diseases. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to remove certain obsolete or redundant sections of the new animal drug regulations. That proposed rule contains background information about those regulations and also for this action.

DATES: This rule is effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e-mail: *abeaulie@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, holds an approval for NADA 138–934 for use of PENNCHLOR SP 250 and PENNCHLOR SP 500 (chlortetracycline, procaine penicillin, and sulfamethazine) three-way, fixed combination Type A medicated articles to make three-way combination drug Type C medicated swine feeds for use for growth promotion, increased feed efficiency, and the management of several bacterial diseases. This product is subject to the transitional approval provision of section 108(b)(2) of the Animal Drug Amendments of 1968 and is currently subject to interim marketing under § 558.15(g)(1) (21 CFR 558.15(g)(1)). At this time, 21 CFR 558.145 is being amended to reflect this approved application.

We note the drug sponsors designated for this product in § 558.15(g)(1), American Cyanamid Co. and Pfizer, Inc., are incorrect. Likewise, the provision states that the use levels and indications for use for this medicated article are listed in § 558.15(g)(2), but this information was apparently never listed in § 558.15(g)(2).

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.145 [Amended]

■ 2. Section 558.145 *Chlortetracycline, procaine penicillin, and sulfamethazine* is amended in paragraph (a)(2) by adding ''and 053389'' after ''046573''.

Dated: August 1, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–20245 Filed 8–5–03; 4:09 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2003–15813]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2003 and June 30, 2003, that were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between April 1, 2003 and June 30, 2003.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities.

Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones and safety zones. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations are security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from April 1, 2003, through June 30, 2003, unless otherwise indicated.

Dated: August 4, 2003.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—2ND QUARTER 2003

COTP docket	Location	Type	Effective date
Charleston 03–093	Charleston, SC	Safety Zone	5/31/2003
Jacksonville 03–055	St. Johns River, Jacksonville, FL	Safety Zone	4/26/2003
Jacksonville 03–059	Atlantic Ocean, Cocoa Beach, FL	Safety Zone	4/26/2003
Jacksonville 03–061	Banana River, Cocoa Beach, FL	Safety Zone	4/25/2003
Jacksonville 03–074	Fernandina Beach, FL	Safety Zone	5/2/2003
Jacksonville 03–096	Indian River, New Smyrna Beach, FL	Safety Zone	6/28/2003
Louisville 03–002	Cincinnati Offshore Grand Prix, Ohio River	Safety Zone	6/14/2003
Memphis 03–001	McCellan-Kerr Arks. Riv. M. 335.3 to 336.3	Safety Zone	5/15/2003
Miami 03–065	West Palm Beach, FL	Safety Zone	5/29/2003
Miami 03–066	Port Everglades, Fort Lauderdale, FL	Security Zone	4/28/2003
Miami 03–067	Fort Lauderdale, FL	Safety Zone	5/3/2003
Miami 03–068	Sun Fest West Palm Beach, FL	Safety Zone	5/2/2003
New Orleans 03–008	LWR Mississippi River, M. 94	Safety Zone	4/12/2003
New Orleans 03–009	LWR Mississippi River, M. 19 to 21	Safety Zone	4/12/2003
New Orleans 03–010	LWR Mississippi River, M. 430	Safety Zone	4/15/2003
New Orleans 03–011	LWR Mississippi River, Passes, LA	Security Zone	4/9/2003
New Orleans 03–012	Inner Harbor Nav. Canal, New Orleans, LA	Safety Zone	4/15/2003
Paducah 03–007	Upper Mississippi River, M. 51.5 to 52.5	Safety Zone	4/7/2003
Paducah 03–008	Upper Mississippi River, M. 51.5 to 52.5	Safety Zone	4/10/2003
Paducah 03–011	Ohio River, M. 962 to 963	Safety Zone	4/29/2003
Paducah 03–012	Upper Mississippi River, M. 51.5 to 52.5	Safety Zone	5/1/2003
Paducah 03–013	Tennessee River, M. 446 to 475	Safety Zone	5/6/2003
Philadelphia 03–018	Delaware Bay and River	Security Zone	6/6/2003
Pittsburgh 03–003	Allegheny River, M. 0.3 to 0.7	Safety Zone	4/8/2003
Pittsburgh 03–004	Allegheny River, M. 0.3 to 0.7	Safety Zone	4/19/2003
Pittsburgh 03–005	Monogahela River, M. 97.5 to 98.5	Safety Zone	5/9/2003
Port Arthur 03–003	Gulf Intracoastal Water, M. 319	Safety Zone	4/15/2003
Port Arthur 03–004	Port Arthur Ship Canal, Port Arthur, TX	Safety Zone	5/15/2003
Port Arthur 03–005	Port Arthur Ship Canal, Port Arthur, TX	Safety Zone	5/16/2003
Port Arthur 03–006	Neches River, Port Neches, TX	Safety Zone	5/21/2003
Port Arthur 03–007	Port Arthur Ship Canal, Port Arthur, TX	Safety Zone	6/10/2003
San Diego 03–016	National City Marine Terminal, San Diego	Security Zone	4/25/2003
San Diego 03–020	Naval Base Coronado, San Diego, California	Security Zone	5/1/2003
San Diego 03–021	Colorado River	Safety Zone	5/9/2003
San Diego 03–024	Laughlin, Nevada	Safety Zone	5/25/2003
San Francisco 03–006	Suisun Bay, Concord, CA	Security Zone	4/5/2003
San Francisco 03–007	Oakland Inner Harbor, Oakland, CA	Security Zone	4/30/2003
San Francisco Bay 03–011	Oakland Inner Harbor, Oakland, CA	Safety Zone	6/7/2003
San Francisco Bay 03–012	Oakland Estuary, Alameda, CA	Security Zone	6/12/2003
San Francisco Bay 03–013	Pillar Point, California	Safety Zone	6/12/2003
San Francisco Bay 03–015	San Francisco Bay, San Francisco, CA	Security Zone	6/27/2003
San Francisco Bay 03–016	Half Moon Bay and Vicinity of Pillar Pt., CA	Safety Zone	6/24/2003
San Francisco Bay 03–018	Half Moon Bay and Vicinity of Pillar Pt., CA	Safety Zone	6/26/2003
San Juan 03–063	San Juan, Puerto Rico	Security Zone	4/16/2003
San Juan 03–084	San Juan, Puerto Rico	Security Zone	5/14/2003
Savannah 03–056	Savannah River, Savannah, GA	Security Zone	4/2/2003
Savannah 03–064	Savannah River, Savannah, GA	Security Zone	4/18/2003
Savannah 03–070	Brunswick River, Brunswick, GA	Safety Zone	4/24/2003
Savannah 03–077	Savannah River, Savannah, GA	Security Zone	5/8/2003
Savannah 03–085	Savannah River, Savannah, GA	Security Zone	5/21/2003
Savannah 03–086	Savannah River, Savannah, GA	Safety Zone	5/20/2003

COTP QUARTERLY REPORT—2ND QUARTER 2003—Continued

COTP docket	Location	Type	Effective date
St. Louis 03–003	Upper Mississippi River M. 403.5 to 404.5	Safety Zone	6/22/2003
Tampa 03–058	Clearwater Harbor, Florida	Security Zone	4/5/2003

DISTRICT QUARTERLY REPORT—2ND QUARTER 2003

District docket	Location	Type	Effective date
01–03–015	Hudson River, Middle Ground Flats, Hudson, NY	Safety Zone	6/14/2003
01–03–032	Branford, CT	Safety Zone	6/21/2003
01–03–046	Bridgeport, CT	Safety Zone	5/17/2003
01–03–048	New London, CT	Security Zone	5/21/2003
01–03–049	Boston Harbor Fireworks, Boston, Mass	Safety Zone	6/29/2003
01–03–052	JFK Library, Boston, MA	Safety Zone	5/28/2003
01–03–055	Vietnam Veterans Fireworks, East Haven, CT	Safety Zone	6/29/2003
01–03–056	Harkness Fireworks Display, Waterford, CT	Safety Zone	6/28/2003
01–03–058	Godfrey Wedding Fireworks, Westport, CT	Safety Zone	6/28/2003
01–03–077	ISC Boston, MA	Safety/Security	6/27/2003
05–03–039	Neuse River, New Bern, NC	Special Local	5/3/2003
05–03–041	Williamsburg, Virginia	Safety Zone	4/29/2003
05–03–044	Hampton Roads, Elizabeth Riber, VA	Security Zone	5/6/2003
05–03–045	Hampton Roads, Elizabeth River, VA	Security Zone	5/4/2003
05–03–052	Atlantic Ocean, Point Pleasant Beach	Special Local Reg	6/22/2003
05–03–053	Isle of Wight Bay, Ocean City, Maryland	Safety Zone	5/26/2003
05–03–054	Tappahannock, Virginia	Safety Zone	5/30/2003
05–03–055	Chester River, Chestertown, MD	Special Local Reg	6/28/2003
05–03–067	Hampton Roads, Elizabeth River, VA	Security Zone	6/11/2003
05–03–069	Hampton Roads, Elizabeth River, VA	Security Zone	6/14/2003
05–03–070	Hampton Roads, Elizabeth, River, VA	Security Zone	6/16/2003
05–03–071	Patapsco River, Baltimore, Maryland	Safety Zone	6/14/2003
09–03–220	Muskego Lake, Muskegon, MI	Safety Zone	6/7/2003

[FR Doc. 03–20193 Filed 8–7–03; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–227]

RIN 1625–AA00

Safety Zone; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone inside Milwaukee Harbor for the Offshore Power Boat Races. This safety zone is necessary to protect spectators and vessels from the hazards associated with high speed vessels. This safety zone is intended to restrict vessel traffic from a portion of the Milwaukee Harbor.

DATES: This rule is effective from 9 a.m. on August 8, 2003 until 5 p.m. on August 10, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–227] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This safety zone is established to safeguard the public from the hazards of high-speed boat races. The size of the zone was determined by the race course and using previous experiences of high-speed boat races in the Captain of the Port zones and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be enforced on August 8, 2003 from 9 a.m. until 4 p.m.; on August 9 and 10, 2003 from 9 a.m. until 5 p.m. The safety zone will start at the following coordinates: 43° 02.423′ N 087° 53.167′ W west to 43° 02.422′ N 087° aves\rules.xml 53.442′ W south to 43° 01.583′ N 087° 53.550′ W southeast to 43° 00.533′ N 087° 53.091′ W east to 43° 00.619′ N 087° 52.827′ W north to 43° 01.587′ N 087° 53.244′ W north to ending waypoint 43° 02.423′ N 087° 53.167′ W located inside of Milwaukee Harbor. There will also be a northern zone prohibiting vessel traffic into the

racing area at the following position 43° 02.473′ N 087° 52.877′ W to 43° 02.535′ N 087° 53.020′ W to 43° 02.565′ N 087° 53.127′ W to 43° 02.590′ N 087° 53.260′ W. There will also be a southern zone which also provides a lane for recreational vessels into inner Milwaukee Harbor. At the following position 43° 00.490′ N 087° 52.660′ W to 43° 00.429′ N 087° 52.744′ W to 43° 00.373′ N 087° 52.886′ W to 43° 00.343′ N 087° 53.055′ W to 43° 00.508′ N 087° 53.246′ W to 43° 00.597′ N 087° 53.318′ W to 43° 00.911′ N 087° 53.467′ W to 43° 01.100′ N 087° 53.559′ W to 43° 01.218′ N 087° 53.612′ W to 43° 01.311′ N 087° 53.642′ W to 43° 01.378′ N 087° 53.617′ W to 43° 01.504′ N 087° 53.649′ W (NAD 83)

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Discussion of Rule

The Coast Guard is establishing a safety zone running between the break walls inside and outside Milwaukee Harbor, Milwaukee, Wisconsin. High-speed vessels will be transiting the inner harbor on Friday August 8, 2003 to tune their engines and become familiar with the race course. Due to other vessel traffic there will be times that when the high-speed vessels will not be transiting the area so other vessels may transit this area. On August 9 and 10, 2003 the races will occur. There will be breaks between races for other vessels to transit in and out of the harbor. The Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the inner and outer Milwaukee Harbor on August 8, 2003 from 9 a.m. until 4 p.m. and again on August 9 and August 10, 2003 from 9 a.m. until 5 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*See* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–227 is added to read as follows:

§ 165.T09–227 Safety Zone; Milwaukee Harbor, Milwaukee, WI.

(a) *Location.* The following is a safety zone bounded by the following coordinates: 43° 02.423′ N 087° 53.167′ W west to 43° 02.422′ N 087° 53.442′ W south to 43° 01.583′ N 087° 53.550′ W southeast to 43° 00.533′ N 087° 53.091′ W east to 43° 00.619′ N 087° 52.827′ W north to 43° 01.587′ N 087° 53.244′ W north to ending waypoint 43° 02.423′ N 087° 53.167′ W located inside of Milwaukee Harbor. There will also be a northern zone prohibiting vessel traffic into the racing area at the following position 43° 02.473′ N 087° 52.877′ W to 43° 02.535′ N 087° 53.020′ W to 43° 02.565′ N 087° 53.127′ W to 43° 02.590′ N 087° 53.260′ W. There will also be a southern zone which also provides a lane for recreational vessels into inner Milwaukee Harbor. At the following position 43° 00.490′ N 087° 52.660′ W to 43° 00.429′ N 087° 52.744′ W to 43° 00.373′ N 087° 52.886′ W to 43° 00.343′ N 087° 53.055′ W to 43° 00.508′ N 087° 53.246′ W to 43° 00.597′ N 087° 53.318′ W to 43° 00.911′ N 087° 53.467′ W to 43° 01.100′ N 087° 53.559′ W to 43° 01.218′ N 087° 53.612′ W to 43° 01.311′ N 087° 53.642′ W to 43° 01.378′ N 087° 53.617′ W to 43° 01.504′ N 087° 53.649′ W (NAD 83)

(b) *Enforcement Periods.* This rule is effective from 9 a.m. on August 8, 2003 until 5 p.m. on August 10, 2003. This section will be enforced from 9 a.m. until 4 p.m. on August 8, 2003 for warm-ups; and from 9 a.m. until 5 p.m. on August 9 and again on August 10, 2003 for the races.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: July 30, 2003.

H.M. Hamilton,

Commander, U.S. Coast Guard Captain of the Port Milwaukee.

[FR Doc. 03–20194 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–224]

RIN 1625–AA97

Safety Zone; Harley Davidson Motor Company 100th Anniversary Fireworks, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Milwaukee Harbor for the Harley Davidson 100th Anniversary fireworks display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Milwaukee Harbor.

DATES: This rule is effective from 9:50 p.m. (CST) on August 30, 2003 until 10:15 p.m. (CST) on September 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–03–224 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician First Class Mike Schmitdke, Marine Safety Office Milwaukee, at (414)747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 16, 2003 we published a notice of proposed rulemaking (NPRM) for this regulation (68 FR 35615). The permit application was received such that we could receive public comment on the proposed rule. However, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days from the date of publication. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

This safety zone is established to safeguard the public from the hazards associated with launching of fireworks inside Milwaukee Harbor. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

This rule is effective from 9:50 p.m. (CST) on August 30, 2003 until 10:15 p.m. (CST) on September 1, 2003. The safety zone will encompass all waters and adjacent shoreline bounded by the arc of the circle with a 1680-foot radius with its center in approximate position 43° 02.16′ N, 087° 53.18′ W. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Discussion of Comments and Changes

We received no comments for this rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of outer Milwaukee Harbor from 9:50 p.m. (CST) until 10:15 p.m. (CST) on August 30 and 31, 2003. And again on September 1, 2003 in the event of inclimate weather.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*See* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local government and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–224 is added to read as follows:

§ 165.T09–224 Safety Zone; Harley Davidson Motor Company 100th Anniversary Fireworks, Milwaukee, Wisconsin.

(a) *Location.* The following area is a safety zone: All waters and adjacent shoreline bounded by the arc of a circle with a 1680-foot radius with its center in approximate position 43°02.16′N, 087°53.18′ W, located in Milwaukee Harbor. These coordinates are based upon North American Datum 1983.

(b) *Enforcement periods.* This rule is effective from 9:50 p.m. (CST) on August 30, 2003 until 10:15 p.m. (CST) on September 1, 2003. This section will be enforced from 9:50 (CST) until 10:15 (CST) on August 30; again on August 31; and, in the event of inclement weather, during these same times on September 1, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The ''duly appointed representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 21A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restriction imposed.

Dated: July 30, 2003.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 03–20195 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–246]

RIN 1625–AA97

Safety Zone; Sailing Vessels Red Witch, Pride of Baltimore II, Larinda, True North, Nina, HMS Bounty, Fair Jeanne—Kenosha, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone of 100 yards around the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE. This safety zone is necessary to protect the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE from other vessels that may impede their safe navigation. This safety zone is intended to restrict vessel traffic within the vicinity of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE while they are underway on Lake Michigan.

DATES: This rule is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This rule will be enforced when the vessels are underway, on Lake Michigan, and are within 3 nautical miles of shore.

ADDRESSES: Comments on this rule may be addressed to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. (CST) and 3:30 p.m. (CST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Michael Schmidtke, Marine Safety Office Milwaukee, (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making the rule effective less than 30 days after publication. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This Safety Zone is established to safeguard the vessel and the public. The size of the zone was determined by the necessities of safe navigation in the Captain of the Port (COTP) zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This rule will be enforced when the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS

BOUNTY, and FAIR JEANNE are underway, on Lake Michigan in the COTP Milwaukee zone, and are within 3 nautical miles of shore. This zone will be a moving safety zone.

Discussion of Rule

The Coast Guard will implement a safety zone around the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE in vicinity of Kenosha, WI. Vessels are not to come within 100 yards of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE while they are underway for the purposes of safe navigation for the sailing vessels as well as other vessels. The Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on-scene representative. Entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone and that the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: The owners or operators of vessels intending to transit or anchor in the vicinity of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while underway on Lake Michigan, from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only a few hours to safeguard the navigation of the boating public and the navigation of the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while the vessels are underway on Lake Michigan. In addition, commercial vessels transiting the area can transit around the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*See* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–246 is added to read as follows:

§ 165.T09–246 Safety Zone; Sailing Vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, Kenosha, WI.

(a) *Location.* (a) The following area is designated a safety zone: the waters of Lake Michigan in the Captain of the Port Milwaukee Zone, within a 100 yard radius of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while the vessels are underway and within 3 nautical miles of shore.

(b) *Effective period.* This section is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This section will be enforced when the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE are underway, on Lake Michigan, and are within 3 nautical miles of shore.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene representative. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: July 29, 2003.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 03–20330 Filed 8–5–03; 4:07 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–501]

Safety Zone; Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during August 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

DATES: Effective from 12:01 a.m. (CST) on August 1, 2003 to 11:59 p.m. (CST) on August 31, 2003.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Michael Schmiktke, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747–7155.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (24) and (25) (67 FR 44560, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone during August 2003. The following safety zones are in effect for fireworks displays occurring in the month of August 2003:

(1) Sturgeon Bay Venetian Night Fireworks.

Location: All waters and adjacent shoreline off the Sturgeon Bay Yacht Club, Sturgeon Bay Canal encompassed by the arc of a circle with a 350-foot radius of the fireworks launch platform with its center in approximate position 44° 49.33′ N, 087° 23.27′ W (NAD 1983), on August 2, 2003, from 8:45 p.m. until 9:30 p.m. This safety zone will temporarily close down the Sturgeon Bay Canal.

(2) Menominee Waterfront Festival Fireworks.

Location: All waters and adjacent shoreline off the southeast side of the Menominee Municipal Marina, Lake Michigan, encompassed by the arc of a circle with an 840-foot radius of the fireworks barge with its center in approximate position 45°20.05′ N, 087°36.49′ W (NAD 1983), on August 9, 2003, from 9:30 p.m. until 10 p.m.

Dated: July 29, 2003.

H.M. Hamilton,

Commander, Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 03–20197 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0127; FRL–7321–6]

2,6-Diisopropylnaphthalene; Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance of 0.5 parts per million (ppm) for 2,6-Diisopropylnaphthalene (2,6-DIPN) in or on potatoes, and 3 ppm in or on potato peels. Platte Chemical Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The temporary tolerance will expire on May 31, 2006.

DATES: This regulation is effective August 8, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0127, must be received on or before October 7, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *Benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0127. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml__00/ Title__40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

In the **Federal Register** of September 21, 2001 (66 FR 48677) (FRL–6798–3), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PF–1043) by Platte Chemical Company, 7251 4th Street, Greely, CO 80632. This notice included a summary of the petition prepared by the petitioner Platte Chemical Company.

The petition requested that 40 CFR 180.1208 be amended by establishing a temporary tolerance for residues of the plant growth regulator 2,6-DIPN, in or on potatoes at 3 parts per million (ppm) for the peels, 0.5 ppm for potato (whole). The tolerance will expire on May 31, 2006. EPA received comments on this petition submitted by John Forsythe, General Manager, on behalf of D-I-1-4, Inc. (Meridian, ID). The issues raised by Mr. Forsythe related to the following: (1) The classification of 2,6-DIPN as a biochemical pesticide; (2) the lack of chronic toxicity data; and (3) the public's exposure to this chemical through its use as an industrial chemical. Mr. Forsythe's comments are discussed individually below, along with EPA's response.

Comment 1. Mr. Forsythe requested that the Agency re-evaluate the biochemical classification determination for 2,6-DIPN and provide any publicly available information regarding the natural occurrence of 2,6-DIPN in any food source.

EPA Response. A biochemical pesticide, by definition, is a naturally occurring substance which controls target pests by a non-toxic mode of

action. However, there are products that are not naturally occurring, yet they are registered by the Agency as ''biochemical-like,'' insofar as data requirements are concerned. Thus, while 2, 6-DIPN, is synthetic and does not occur naturally in any food or non-food plants, it is structurally similar to three compounds (1-isopropyl- 4,6-dimethylnaphthalene, 1-methyl-7-isopropylnaphthalene, and 4-isopropyl-1,6-dimethylnaphthalene) that occur naturally in potatoes, and 2,6-DIPN is functionally identical to the naturally occurring plant growth regulator in potatoes.

Comment 2. Mr. Forsythe expressed concern that the Agency had not presented any public documentation demonstrating that the mode of action of 2,6-DIPN is non-toxic.

EPA Response. The new active ingredient, 2,6-DIPN, is a plant growth regulator (PGR) intended to inhibit sprouting in stored potatoes. PGRs may stimulate or retard ripening, maturity of whole plants and/or fruits, enhance growth, yield, enhance or counteract the activities of other PGRs, and/or change plant architecture (amongst other processes). PGRs are not toxic to the target plant, especially at the application rate. Tests conducted during the experimental use permit showed no toxicity to potatoes. None of these actions are directly lethal to the plants upon which they are applied, which supports a determination that 2, 6-DIPN operates through a non-toxic mode of action. Diisopropylnapthalene is similar in molecular structure, and functions as three sprout inhibiting compounds naturally occurring in potatoes (1-isopropyl-4,6-dimethylnaphthalene, 1-methyl-7-isopropylnaphthalene, and 4-isopropyl-1,6-dimethylnaphthalene). The three compounds found in potatoes and 2,6 DIPN are all isopropyl napthalene, a sprout inhibitor in a manner comparable to natural PGRs found in potato plants (as described above). In addition, acute toxicity studies conducted on animals indicated Toxicity Category IV for all routes of exposure and chronic studies were not triggered following the data requirements for biochemical pesticides as given in 40 CFR 158.690(c). EPA therefore has concluded that its mode of action can be classified as ''non-toxic.''

Comment 3. Mr. Forsythe expressed concerns regarding dietary intake of 2,6-DIPN, due to: (1) The synthetic nature of the compound; and (2) the lack of toxicity information to support an assessment of dietary exposure to 2,6-DIPN.

EPA Response. As discussed in the previous response, the data support the classification of 2,6-DIPN as a biochemical, based on its structural similarity to naturally occuring PGRs. In addition, the registrant has conducted a series of toxicity tests according to the requirements listed in 40 CFR 158.690, in support of experimental use permits (EUPs) and for product registration. Dietary exposure estimates were based on the assumption that 100% of the crop will be treated, and other worst-case assumptions were applied to overestimate the typical dietary exposure likely under normal conditions of use.

A 90–day oral toxicity study (MRID 450493-01) demonstrated that rats did not exhibit immune system effects, demonstrated by no changes in spleen or thymus weights and absence of lesions in spleen, thymus, and lymph nodes. The 90–day oral no observable adverse effects level (NOAEL) was 100 milligrams/kilogram/day (mg/kg/day), and the lowest observable adverse effects level (LOAEL) was 200 mg/kg/day, based on decreased body weight gain and food consumption. In a developmental toxicity study (MRID 4500010–01) in rats, the test animals did not exhibit increased fetal susceptibility to 2,6-DIPN when compared to untreated animals. The prenatal developmental toxicity NOAEL was 150 mg/kg/day and the LOAEL was 500 mg/kg/day, based on decreased fetal body weight and a possible treatment-related cartilage anomaly.

The toxicity data on 2,6-DIPN does not indicate extra sensitivity of offspring when compared with that of adult animals, but the data base does not represent a complete assessment of potential age-related sensitivity or acute effects other than lethality. The absence of a developmental toxicity study in a second species, a multigeneration reproduction toxicity study, or a range of doses adequate to induce a full range of toxic responses, especially potential acute effects in any of the available studies, required that the FQPA 10-fold safety factor be retained in defining EPA's level of concern.

Studies submitted to test the potential genotoxicity or mutagenicity of 2,6-DIPN included a reverse mutation (Ames) assay (MRID 446141–11), an unscheduled DNA synthesis assay in rat primary hepatocytes (MRID 446141–10), and a mouse micronucleus assay (MRID 446141–12); all of these were negative. A mouse lymphoma assay (MRID 454388–01) was positive at higher concentrations for mutagenicity, but since 2,6-DIPN was cytotoxic (killed the test cells) at the those concentrations where the positive results occurred (with and without metabolic activation), the test results are considered as being equivocal, or falsely positive. As a group, these four studies demonstrated that 2,6-DIPN is not a mutagen.

Information supplied by the commenter (Ref. 5) noted that ''Di-Isopropylnaphthalene(s) contained no chemical groups that would be structurally alerting for potential mutagenicity.'' Additionally, in spite of the equivocal study (MRID 454388–01), ''there was no evidence for a mutagenic effect in other *in-vitro* mutagenicity tests or in an adequately performed *in vivo* micronucleus assay in mice. The Committee agreed that no further mutagenicity testing was required.''

Based on the absence of effects on the immune system in the 90–day subchronic study, no effects on developing rats at doses below those causing maternal effects, and no genetic toxicity, Tier II and Tier III toxicity data requirements were not triggered. The Agency does not require any additional toxicity studies at this time although a livestock feeding study must be conducted as a condition of registration (see EPA Response to Comment 4).

Comment 4. Mr. Forsythe stated that, in the absence of any chronic toxicity data, ''it would be inappropriate to disregard the safety factor'' (referring to the FQPA 10-fold margin of safety to account for effects on sensitive populations, such as infants and children), and that ''threshold effects cannot be fully determined, and a safety factor would seem appropriate to address this lack of a complete data set regarding dietary exposure and chronic toxicity.''

EPA Response. As stated above, the Agency has retained the FQPA safety factor in its assessment of the dietary exposure to 2,6-DIPN.

Comment 5: Mr. Forsythe stated that the Agency should consider non-dietary and non-occupational sources of human exposure to 2,6-DIPN. The commenter submitted an EPA document (Ref. 5), in which 2,6-DIPN is described as an ''emerging pollutant'' in Lake Michigan. The document also states that polychlorinated biphenyl (PCB) substitute compounds (which include 2,6-DIPN), are ''detected in effluent, sediment, and fish in the basin; bioaccumulative and toxic.''

Additionally, the commenter provided information that European governments have expressed concerns regarding public exposure to DIPNs via the paper industry. In studies conducted by the United Kingdom Joint Food Safety and Standards Group (JFSSG), it was determined that DIPNs could be present in recycled food packaging and in packaged food (Ref. 5). DIPNs were

detected in 30 of 34 samples of retail packaging at up to 44 mg/kg, and in 6 of 10 food samples at 0.04–0.89 mg/kg.

EPA Response. Section 408(b)(2)(A)(ii) explicitly requires the Agency to find that ''there is a reasonable certainty that no harm will result from aggregate exposures, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' (emphasis added). As discussed below, EPA has considered all available information on non-dietary and non-occupational exposures in establishing this temporary tolerance.

EPA reviewed the LaMP study (Ref. 5), and found that these ''emerging pollutants'' were only included in a list of chemical stressors in the lake ''as a precautionary measure, either because of their widespread use in the basin, the fact that these chemicals are beginning to show up in monitoring data, or both.'' The list of emerging pollutants listed includes: Mineral and silicone oils, di(2-ethylhexyl)phathalate (DEHP), isopropylbiphenyls, diphenylmethanes, butylbiphenyls, dichlorobenzyldichlorotoluene, phenylxylyl ethane, and diisopropylnaphthalene. The article does list PCB substitute compounds as being ''detected in effluent, sediment, and fish in the basin; bioaccumulative and toxic'' (Ref. 5). According to the Michigan LaMP (Ref. 5), ''Following the 1979 restrictions on PCB use, [these] compounds began being used in dielectric fluids, hydraulic system lubricants, and in solvents and carriers in the carbonless paper industry. Little was known about the potential impact of these (PCB) substitutes on the basin; therefore (they) were designated an emerging pollutant needing further evaluation.'' With the exception of DHEP, the Michigan LaMP goes on to state that ''other PCB substitutes (such as DIPN) have not been extensively studied; therefore, information on releases to the environment are limited.'' The article further states that information regarding the actual loading of PCB substitutes into Lake Michigan and their impact on the lake ecosystem were unknown (Ref. 5).

An environmental sampling study (Ref. 5), indicated that DIPNs and three other PCB substitutes were identified in effluent from: A de-inking/recycling paper plant and a wastewater treatment facility that received waste water from a carbonless paper manufacturing plant; fish collected near discharge points; and sediments, all of these samples were collected from the Fox River in Wisconsin. However, it is unknown whether all four PCB substitutes were found nor what concentrations were measured in each, and the study lacked environmental fate and transport data for DIPNs. Based on the statements in the LaMP study, EPA concluded that although DIPNs have been detected in a few environmental matrices, it has not been associated with any adverse effects to human health or the environment.

EPA also reviewed the JFSSG Food Surveillance Information Sheet, No. 169, January 1999. The conclusion reached by the JFSSG was that although varying amounts of DIPNs can be carried through the papermaking process to the finished product, there was no correlation between DIPN levels in food and that found in the food packaging materials.

Data was reviewed that demonstrated that 2,6-DIPN does not pose any significant bioaccumulation risk. A summary of metabolism studies/data in support of a temporary tolerance exemption on stored potatoes (PP 8G05008; Ref. 3; MRIDs 451632–01 and 451632–02) was submitted by the registrant, Platte Chemical Co., that demonstrated orally administered DIPNs were rapidly metabolized and excreted by experimental animals, and exhibited little potential for bioaccumulation (Ref. 5). Additionally, experimental animals exposed to DIPNs via inhalation did not exhibit any clinical signs of toxicity or mortality (Ref. 5). Necropsies were negative in experimental animals dosed with DIPNs in all of the aforementioned studies.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997; FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of 2,6-DIPN on potatoes at 3 ppm for the peels and 0.5 ppm for potato (whole) ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The classification of 2,6-DIPN as a biopesticide was based on its structural and functional similarity to 1-isopropyl-4,6-dimethylnaphthalene, 1-methyl-7-isopropylnaphthalene, and 4-isopropyl-1,6-dimethylnaphthalene which are naturally occurring plant growth regulators found in plant tissues. In addition, 2,6-DIPN is a sprout inhibitor, with a non-toxic mode of action. Therefore, the toxicity data reviewed include acute oral, dermal and inhalation toxicity studies, eye and skin irritation studies, a dermal sensitization study, subchronic feeding and developmental toxicity studies and genetic toxicity studies.

2,6-DIPN is classified in Toxicity Category IV for mammalian acute oral toxicity (lethal dose $(LD)_{50}$ > 5,000 mg/kg; OPPTS Harmonized Guideline 870.1100; 152–10; MRID 446141–04), acute dermal toxicity (LD_{50} > 5,000 mg/kg; OPPTS Harmonized Guideline 870.1200; 152-11; MRID 446141–05), and acute inhalation toxicity (lethal concentration $(LC)_{50}$ >2.60 mg/L; OPPTS Harmonized Guideline 870.1300; 152–12; MRID 446141–06), eye irritation (OPPTS Harmonized Guideline 870.2400; 152–13; MRID 446141–07) and dermal irritant (OPPTS Harmonized Guideline 870.2500; 152–14; MRID 446141–08). The active ingredient was not allergenic on skin (not a dermal sensitizer; OPPTS Harmonized Guideline 870.2600; 152–15; MRID 446141–09).

The subchronic toxicity study in rats (OPPTS Harmonized Guideline 870.3100; 152-20; MRID 450493–01) suggests a no observed effect level (NOEL) of 104 mg/kg/day (104 or 121 mg/kg/day for males and females, respectively). The lowest observed adverse effect level (LOAEL) is 208 mg/kg/day (208 and 245 mg/kg/day for males and females, respectively), based on minimal decreases in body weight gains, food consumption, adrenal effects (including increased absolute and relative organ weights and adrenal cortical hypertrophy) and kidney toxicity (evidence of tubular nephrosis in male rats).

In the rat developmental toxicity study (OPPTS Harmonized Guideline

870.3700; 152–23; MRID 450001–01), the maternal toxicity LOAEL is 150 mg/kg/day based on reduced body weight gains and food consumption. The maternal toxicity NOAEL is 50 mg/kg/day. The developmental toxicity LOAEL is 500 mg/kg/day based on reduced fetal body weights and a slightly increased incidence of a skeletal alteration (fusion of cartilaginous bands in the cervical centra). The developmental toxicity NOAEL is 150 mg/kg/day.

A mouse lymphoma gene mutation assay (OPPTS Harmonized Guideline 870.5300; 152–17; MRID 454388–01) showed that 2,6-DIPN might be mutagenic without metabolic activation at doses between 10–30 µg/mL. With metabolic activation, the results were equivocal at doses between 25–90 µg/mL. Cytotoxicity was observed in tests using the aforementioned doses, with and without metabolic activation. No genotoxicity was observed in other acceptable studies including a reverse mutation (Ames) assay (OPPTS 870.5100; 152–17; MRID 446141–11), *in vivo/in vitro* unscheduled DNA synthesis (UDS) assays in rat primary hepatocytes (OPPTS 870.5550; 152–17; MRID 446141–10), and a mouse micronucleus assay (OPPTS 870.5395; 152–17; MRID 446141–12). The collective data from the four-study mutagenicity battery demonstrates that 2,6-DIPN is not likely to be mutagenic.

B. Toxicological Endpoints

1. *Acute toxicity*. The acute toxicity studies were acceptable in accordance with the guidelines as discussed in Unit III.A. All studies were performed at a single limit dose with no observable (non-lethal) toxic endpoints.

2. *Short-term and intermediate-term toxicity*. Although the rat developmental toxicity study indicates a lower maternal NOEL (50 mg/kg/day) for similar toxicity than the subchronic toxicity study (reduced body weight, weight gain and food consumption), the maternal LOAEL of 150 mg/kg/day falls between the subchronic NOEL of 104–121 mg/kg/day and the subchronic LOAEL of 208–245 mg/kg/day. The maternal NOEL of 50 mg/kg/day from the developmental toxicity study may be appropriate for use in characterization of risks for the subpopulation of women 13–49 years of (child-bearing) age. However, the 104 mg/kg/day NOEL in the subchronic study was selected as the endpoint for short-term and intermediate-term dietary assessments since the effects observed at the subchronic LOAEL (208–245 mg/kg/day) were more thoroughly defined than the developmental effects observed at the LOAEL (500 mg/kg/day) in the developmental toxicity study, which were minimal.

A reference dose (RfD) of 1 mg/kg/day is established by dividing the 104 mg/kg/day NOEL by a 100-fold uncertainty factor (10X for interspecies extrapolation and 10X for intraspecies variability). Available developmental toxicity data on 2,6-DIPN does not indicate extra sensitivity of offspring when compared with that of adult animals, but a developmental toxicity study in a second species and a multigeneration reproduction toxicity study are needed to fully determine age-related differences in response. In addition, residues have been detected in treated potatoes under laboratory and field conditions. Therefore, the default safety factor of 10X is retained, and acute and chronic population adjusted doses (aPAD and cPAD) for dietary risk characterizations are established by dividing the RfD by 10X (accounting for age-related sensitivity for the subpopulations of infants and children). Therefore, the aPAD and cPAD are 0.1 mg/kg/day.

3. *Chronic toxicity*. An extra 10-fold uncertainty factor for the absence of chronic toxicity data were not applied to determine a RfD because 2,6-DIPN has been classified as a biochemical pesticide having a non-toxic mode of action with biological activity more specific to plants than animals. Acute toxicity studies on animals indicated Toxicity Category IV for all routes of exposure. Chronic studies are not required to support registration of biochemical pesticides unless all of the following are true:

i. Has subchronic toxicity.

ii. Its use pattern involves a significant rate, frequency or site of application.

iii. The frequency and level of human exposure are significant (40 CFR 158.690(c)).

These criteria were evaluated in the Agency's risk assessment (Refs. 1 and 2) which compared the cPAD to worst-case estimates of dietary exposure. The use pattern and exposure associated with 2,6-DIPN on potatoes in storage does not trigger chronic studies. Since the conservative exposure estimates did not result in risk characterizations exceeding the defined level of concern (exposure >100% of the cPAD).

4. *Carcinogenicity*. Based on the 90–day oral toxicity study and the genotoxicity/mutagencity studies, there were no results to indicate potential neoplastic changes, and the genetic toxicity studies did not suggest carcinogenic potential in mammalian cells.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. There is a potential for dietary exposure to 2,6-DIPN, which can occur following its application to stored potatoes. According to the label, the plant growth regulator is to be applied at a rate of 16.6 ppm (weight/weight), and as many as three applications can be used in a storage period with a minimum interval between application and use of the treated potatoes of 30 days.

Residue profile. The submitted residue chemistry data for the use of 2,6-DIPN on potatoes is limited, and important factors in this assessment depend on default assumptions or hypothetical calculations having a low level of confidence.

For purposes of this rule, the regulated residue is considered to be 2,6-DIPN, and a potential for some accumulation of 2,6-DIPN residues in body and subcutaneous fat was observed. These results and the possible use of peels with residues from treated potatoes as livestock feed (processed potato wastes are used for this purpose) suggest that residues of 2,6-DIPN may occur in meat and milk; however, this has not been evaluated in a livestock metabolism study.

Limited field and laboratory residue data suggested tolerance levels as high as 0.5 ppm in/on whole potatoes, 3 ppm on potato peels, 1.35 ppm in meat and meat by-products, and 0.7 ppm in milk.

The analytical method for 2,6-DIPN has a level of quantification (LOQ) of 0.02 ppm and field and laboratory studies suggests that 20 ppm is a likely maximum commercial application rate for 2,6-DIPN. Residue levels expressed as 2,6-DIPN were reported at 3 ppm in potato peels and 0.5 ppm in whole potatoes.

In a published report (MRID 451632–01), the investigators noted that DIPNs could accumulate in the fat of treated rats suggesting a potential for secondary residues in meat and milk from livestock fed treated potatoes, but a livestock metabolism study was not submitted. Worst-case estimates of secondary residues were calculated for meat (1.35 ppm) and milk (0.7 ppm) of beef/dairy cattle fed waste from 2,6-DIPN-treated processed potatoes.

Supplementary metabolism information was submitted on 2,6-DIPN in rats from two published articles (MRID 451632–01). In one study, rats were given either a single dose or 30 daily oral doses, at 100 mg 2,6-DIPN per kg body weight. Residues of 2,6-DIPN were detected in all tissues 2 hours after receiving the test dose. With the

exception of body and subcutaneous fat, DIPN was not detected 48 hours after the single (100 mg/kg) dose. Peak levels in body and subcutaneous fat were found 24 hours after dosing at 75 and 85 µg/g of tissue, respectively; these levels declined to approximately 60 µg/g by 48 hours following the single dose. Results were similar in rats given the repeated doses with the peak levels in body and subcutaneous fat reported to be 150 and 90 µg/g, respectively, at 2 hours following administration of the last dose. By 30 days after this last dose was given, the 2,6-DIPN levels in fat had declined to 5 µg/g. The estimated half-life for 2,6-DIPN in fat was approximately 7 days, and the investigators noted that DIPNs had a small potential for accumulation in fat (levels increased from 2 to 7% over those found after a single dose in subcutaneous and body fat, respectively). Worst-case estimates of secondary residues were calculated for meat (1.35 ppm) and milk (0.7 ppm) of beef/dairy cattle fed waste from 2,6-DIPN-treated processed potatoes. These tolerance provide a reasonable certainty of no harm and livestock feeding studies will allow further refinement of these estimates.

In the second article, it was noted that 2,6-DIPN was metabolized in rats primarily by way of an oxidative pathway involving the isopropyl groups. Five metabolites were identified in urine from rats given an oral dose of 240 mg 2,6-DIPN per kg body weight, and the majority of the DIPN residues recovered in the urine (23% of the dose at 24 hours) was represented by 2-[6(1-hydroxy-1-methyl)ethylnaphthalen-2-yl]-2-hydroxypionic acid (17.5% of the dose). This study did not explain the fate of the remaining 77% of the administered dose. The livestock feeding study should determine the fate of the administered dose, but because worst-case estimates were used to establish the tolerances, there is a reasonable certainty of no harm.

Acute and chronic dietary exposure assessments were conducted using the Dietary Exposure Evaluation Model software (DEEM™ version 1.30) which incorporates consumption data from USDA's Continuing Surveys of Food Intakes by Individuals (CSFII, 1994–1996/1998).

For acute exposure assessments, individual 1-day food consumption data define an exposure distribution which is expressed as a percentage of the aPAD (aPAD is 0.1 mg/kg). For chronic exposure and risk assessment, an estimate of the residue level in each food or food-form on the commodity residue list is multiplied by the average daily consumption estimate for the food/food-form. The resulting residue consumption estimate for each food/food-form is summed with the residue consumption estimate for all other food/food-forms on the commodity residue list to arrive at the total estimated exposure. Exposure estimates are expressed as mg/kg body weight/day and as a percent of the cPAD (0.1 mg/kg/day). It is just as likely that the exposure estimates are appropriate, given that it is not uncommon for the peels to be eaten. These procedures were performed for each population subgroup.

As a condition of registration, the registrant will be required to submit livestock feeding studies and enforcement analytical methods for livestock and potatoes; however, EPA believes that its analyses, which rely on the available data, supplemented with conservative assumptions, are sufficient to support a tolerance for the short period during which these studies are conducted.

2. *Dietary exposure from drinking water*. Pesticide residues in drinking water are not expected to result from this use. The use is restricted to application in a commercial warehouse to stored potatoes. In addition, the label will restrict users from contaminating water supplies when cleaning equipment or disposing of equipment wash waters.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

2,6-DIPN is not registered for use on any sites that would result in residential exposure, but is restricted to use in commercial warehouses.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether 2,6-DIPN has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 2,6-DIPN does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2,6-DIPN has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The toxicity data on 2,6-DIPN does not indicate extra sensitivity of offspring when compared with that of adult animals, but the data base does not represent a complete assessment of potential age-related sensitivity or acute effects other than lethality. The following data would be necessary to allow for a complete assessment: A developmental toxicity study in a second species, a multigeneration reproduction toxicity study, or a range of doses adequate to induce a full range of toxic responses, especially potential acute effects in any of the available studies.

3. *Conclusion*. In light of the absence of a developmental toxicity study in a second species, a multigeneration reproduction toxicity study, or a range of doses adequate to induce a full range of toxic responses, especially potential acute effects in any of the available studies, EPA has retained the default 10-fold safety factor

IV. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

1. *Acute risk*. Acute dietary exposure estimates were based on the available residue data and worst-case assumptions (Refs. 1 and 2). For the U.S. population, acute dietary exposure was estimated to be 0.023113 mg/kg. These

values represented 23.11% of the aPAD. The subpopulation with the highest acute dietary exposure estimate was children 1 to 6 years of age (0.053492 mg/kg; 53.49% of the aPAD). The acute dietary exposures to all the subpopulations in the analysis did not exceed EPA's level of concern (> 100% of the aPAD).

2. *Chronic risk*. Using the exposure assumptions described previously for chronic exposure, EPA has concluded that the chronic dietary exposure for the general population was estimated to be 0.006939 mg/kg/day, 6.9% of the cPAD. The subpopulation with the highest chronic dietary exposure estimate was children 1 to 6 years of age, with estimated exposures of 0.023247 mg/kg/day, which constitutes 23.25% of the cPAD.

3. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to 2,6-DIPN residues. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

V. Other Considerations

A. Analytical Enforcement Methodology

A liquid chromatography (HPLC) method was used to measure the levels of 2,6-DIPN in the residue study.

Adequate enforcement methodology (for example, gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex Alimentarius Commission (Codex) maximum residue levels for residues of 2,6-DIPN.

VI. Conclusion

Based upon the risk assessment, residue data and use pattern described above, a temporary tolerance is established for residues of 2,6-DIPN in raw potatoes and potato peel at 0.5 ppm and 3 ppm respectively.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0127, in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 7, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0127, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. References

1. EPA Memorandum. Roger Gardner to Manying Xue. ''Addendum to a previous review of a petition for an exemption from the requirement of a tolerance (PP# 1F06338) for 2,6-DIPN (PC 055803) in/on stored potatoes (EPA File Symbol No. 34704–IUE; DP Barcodes D276743 and D276753; Submission Nos. S601233 and S601234).'' March 7, 2003.

2. EPA Memorandum. Roger Gardner to Driss Benmhend. ''Petition for an exemption from the requirement of a tolerance (PP# 1F06338) for 2,6-DIPN (PC 055803) in/on stored potatoes (EPA File Symbol No. 34704–IUE; DP Barcodes D276743 and D276753; Submission Nos. S601233 and S601234).'' December 10, 2002.

3. EPA Memorandum. Russell S. Jones to Driss Benmhend. ''Renewal Request for an Experimental Use Permit for Amplify® Sprout Inhibitor (EPA Symbol No. 034704–EUP–13), containing 99.7% 2,6-Diisopropyl-napthlalene [2,6-DIPN; (Chemical No. 055803)] as its Active Ingredient; and a Petition to Extend the Temporary Exemption from the Requirement of a Tolerance on Stored Potatoes (PP# 8G05008). Review of Toxicity, Metabolism, and Residue Chemistry Studies. DP Barcodes D267369 and D267587; Case Nos. 062532 and 290334; Submission Nos. S581969 and S582755; MRIDs 451632–01 and –02.'' August 3, 2000.

4. EPA Memorandum. Russell S. Jones to Driss Benmhend. ''Amplify® Sprout Inhibitor (EPA Symbol No. 034704–EUP–13), containing 99.7% 2,6-Diisopropyl-napthlalene [2,6-DIPN; (Chemical No. 055803)] A New Active Ingredient; and a Petition For Exemption from the Requirement of Tolerances for 2,6-DIPN on Food Commodities (PP# 1F06338). Response to Comments Received Following Publication of an FR Notice Regarding a Request for a Tolerance Exemption for 2,6-DIPN. DP Barcode D278840; Case No. 070700; Submission No. S601234; No MRID Nos.'' August 7, 2000.

5. Lake Michigan Lakewide Management Plan (LaMP Study). United States Environmental Protection Agency, Office of Water, Chapter 5 pp 5-125. April 2000.

IX. Statutory and Executive Order Reviews

This final rule establishes a temporary tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31,2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.590 is added to subpart C to read as follows:

§ 180.590 2,6-Diisopropylnaphthalene (2,6-DIPN); tolerances for residues.

(a) *General.* Tolerances are established for residues of 2,6-Diisopropylnaphthalene (2,6-DIPN) in or on the following commodities:

Commodity	Parts per million	Expiration/ revocation date
Meat	1.35	5/31/06
Meat byproducts	1.35	5/31/06
Milk	0.7	5/31/06
Potatoes (peel)	3	5/31/06
Potatoes (whole)	0.5	5/31/06

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect or inadvertent residues. [Reserved]

§ 180.1208 [Removed]

■ 3. Section 180.1208 is removed.

[FR Doc. 03–20307 Filed 8–7–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–188]

Federal-State Joint Board on Universal Service: Children's Internet Protection Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to ensure that its implementation of the Children's Internet Protection Act (CIPA) complies with the recent decision of the United States Supreme Court. CIPA requires schools and libraries with ''computer Internet access'' to certify that they have Internet safety policies and technology protection measures, *e.g.*, software filtering technology, to receive discounts for Internet access and internal connections under the schools and libraries universal service support mechanism (e-rate).

DATES: The rule and the revised FCC Forms 479 and 486 in this document contain collection requirements that have not been approved by OMB. Upon OMB approval, the Commission will publish a document in the **Federal Register** announcing the effective date of the rule and the revised FCC Forms 479 and 486.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on July 24, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we adopt measures to ensure that our implementation of the Children's Internet Protection Act (CIPA) complies with the recent decision of the United States Supreme Court. CIPA requires schools and libraries with ''computer Internet access'' to certify that they have Internet safety policies and technology protection measures, *e.g.*, software filtering technology, to receive discounts for Internet access and internal connections under the schools' and libraries' universal service support mechanism (e-rate).

2. Libraries subject to CIPA's filtering requirements that are not currently in compliance with the CIPA filtering requirements must undertake efforts in Funding Year 2003 to comply by Funding Year 2004 in order to receive e-rate funds. Libraries must be in compliance with the CIPA requirements by Funding Year 2004, except to the extent such libraries are eligible for and receive a waiver of the CIPA requirements pursuant to section 254(h)(6)(E)(ii)(III). We direct the Administrator in consultation with the Wireline Competition Bureau (Bureau) to implement the necessary procedural changes, including changes to the current CIPA-related certifications required of applicants. We take these steps to respond promptly to the Supreme Court's decision and to ensure that the schools' and libraries' universal service support mechanism continues to operate in accordance with federal law.

II. Discussion

3. Consistent with the Supreme Court decision, as of the effective date of this Order, we lift the suspension of enforcement of those § of 54.520 of our rules which implemented the section 254(h)(6) requirement that libraries have Internet filtering technology to receive discounts for Internet access and internal connections under e-rate. Specifically, we lift the suspension of enforcement of §§ 54.520(c)(2)(i) and (iii), 54.520(c)(3), 54.520(d), and 54.520(g)(1) of our rules as applied to libraries. In addition, we modify § 54.520(f) and (g) to conform with the revised timeline for the implementation of section 254(h)(6) of the Act.

4. Consistent with the implementation framework established by Congress, libraries receiving e-rate discounts for Internet access or internal connections shall have one year from July 1, 2003, which is the start of Funding Year 2003, to come into compliance with the filtering requirements of CIPA. When Congress enacted CIPA in 2001, it recognized that it may take libraries a significant amount of time to procure and install the Internet filtering technology required to comply with CIPA. Accordingly, CIPA allows libraries either to certify (1) that they are in compliance with CIPA or (2) that they are ''undertaking such actions, including any necessary procurement procedures, to put in place'' the required policy measures to comply with CIPA for the next funding year. Given that the Supreme Court decision was issued on June 23, 2003 and will be effective no sooner than July 18, 2003,

we believe that it is unrealistic to expect all libraries to be in a position to certify compliance with CIPA for Funding Year 2003, which began July 1, 2003. In order to comply with the statute's Internet filtering requirement, many libraries must prepare a budget for the purchase of software and related costs, design, procure and/or order software appropriate for their systems, install the software and implement a procedure for unblocking the filter upon request by an adult. This process, as Congress recognized, would almost certainly take some time to complete. Therefore, we conclude that allowing libraries this time period to comply with CIPA filtering requirements is consistent with Congress's intent in enacting CIPA and with the public interest.

5. During Funding Year 2003, all libraries that receive discounts for Internet access or internal connections must certify that they are either compliant with CIPA or undertaking efforts to be in compliance by the time the libraries commence services for Funding Year 2004. Libraries that are not in compliance with CIPA for Funding Year 2003 and will not be undertaking efforts during Funding Year 2003 to comply with CIPA by Funding Year 2004 may not receive e-rate funds for Internet access or internal connections for Funding Year 2003. Such libraries may receive e-rate funds only for telecommunications services. All libraries that have not filed an FCC Form 486 prior to the effective date of this Order must file the revised FCC Form 486. All libraries that filed the September 2002 version of the FCC Form 486 prior to the effective date of this Order and will receive discounts for Internet access or internal connections for Funding Year 2003 must also refile using the revised FCC Form 486. The deadline for submitting all revised FCC Form 486s remains the same for all libraries—the later of 120 days after the Service Start Date or 120 days after the date of the Funding Commitment Decision Letter. Libraries that filed the September 2002 version of the FCC Form 486 for Funding Year 2003 prior to the effective date of this Order and that receive e-rate funds only for telecommunications services are not required to file a revised FCC Form 486. The filing of a revised FCC Form 486 for such libraries is unnecessary because they do not need to certify compliance with the CIPA filtering requirements.

6. These filing requirements also apply to library consortium leaders. Billed entities that are library consortium leaders should abide by the instructions for filing the FCC Form 486. Billed entities that previously filed the September 2002 version of FCC Form 486 on behalf of library consortium members must file the revised FCC Form 486, unless all members of the consortium receive e-rate funds only for telecommunications services. In addition, all library consortium members must file with their billed entity, and all billed entities must collect and hold from each consortium member the revised FCC Form 479. All library consortium members that filed an FCC Form 479 prior to the effective date of this Order must file a revised FCC Form 479 with their billed entity within 45 days after the effective date of this Order. In order for such library consortium members to receive e-rate funds for Internet access and internal connections for Funding Year 2003, they must be in compliance with CIPA or undertaking efforts to be in compliance with CIPA at the time the revised FCC Form 479 is filed. Library consortium members that did not file FCC Form 479 prior to the effective date of this Order should work with their billed entity to determine when to submit the revised FCC Form 479. In addition, billed entities whose consortia include both libraries that are in compliance with CIPA for Funding Year 2003 or undertaking efforts to comply for Funding Year 2004 and libraries that do not intend to comply with CIPA must file FCC Form 500 to adjust their funding commitments as applicable within 30 days after filing the revised FCC Form 486. This FCC Form 500 filing requirement is necessary only for Funding Year 2003 because of the timing of the Supreme Court decision.

7. CIPA also provides for a waiver of the certification requirements in the second year after the effective date of CIPA if state or local procurement rules or regulations or competitive bidding requirements prevent compliance. Accordingly, consistent with this provision of CIPA, a library or billed entity that applies for discounts in Funding Year 2003 may submit a waiver request for Funding Year 2004 if state or local procurement rules or regulations or competitive bidding requirements prevent compliance by the start of Funding Year 2004. The revised FCC Forms 486 and 479 attached to this Order have been revised to reflect this option.

III. Ordering Clauses

8. Pursuant to the authority of sections 1–5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, and 254, and the Children's Internet Protection Act, Public Law 106–554 section 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), this Order is adopted. The modifications to a collection of information contained within this Order are contingent upon approval by the Office of Management and Budget.

9. The suspension of enforcement implemented in the *Interim Order,* 67 FR 50602, August 5, 2002, of §§ 54.520(c)(2)(i) and (iii), 54.520(c)(3), 54.520(d), and 54.520(g)(1) of the Commission's rules as they apply to all libraries and to the extent that they require any library to filter or certify to such filtering under 47 U.S.C. 254(h)(6), is lifted as of the effective date of this Order, consistent with the terms of this Order.

10. Pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 318–220, 254, 303(r), 403, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and the Children's Internet Protection Act, Public Law 106–554 section 1701 *et seq.* as codified at 47 U.S.C. 254(h), the amendments to §§ 54.520 (f) and (g) of the Commission's rules are adopted.

11. Authority is delegated to the Chief of the Wireline Competition Bureau pursuant to section 5(c) of the Communications Act of 1934, 47 U.S.C. 155(c), to modify any forms that are necessary to implement the decisions adopted in this Order.

12. The rule and the revised FCC Forms 479 and 486 in this document contain collection requirements that have not been approved by OMB. Upon OMB approval, the Commission will publish a document in the **Federal Register** announcing the effective date of the rule and the revised FCC Forms 479 and 486.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Amend § 54.520 by revising the second sentence of paragraph (f), revise paragraph (g), and remove the note to § 54.520. The revisions read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the Federal universal service support mechanism for schools and libraries.

* * * * *

(f) * * * The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, for schools, before the start of the third program year after April 20, 2001 in which the school is applying for funds under this title, and, for libraries, before the start of Funding Year 2005 or the third program year after April 20, 2001, whichever is later.

(g) *Funding year certification deadlines*—For Funding Year 2003 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section on an FCC Form 486 in accordance with the existing program guidelines established by the Administrator.

[FR Doc. 03–20205 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1936; MM Docket No. 00–18, RM–9790]

Radio Broadcasting Services; Barnwell, SC, and Douglas, East Dublin, Pembroke, Pulaski, Statesboro, Swainsboro, Twin City, and Willacooche, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Bullie Broadcasting Corporation directed to the *Memorandum Opinion and Order* in this proceeding which granted, in part, a Petition for Reconsideration filed by Multi-Service Corporation to the extent of withholding program test authority for a Channel 257C1 reallotment to Pembroke, Georgia, until a Channel 256C3 allotment at Barnwell, South Carolina, commences operation. *See* 67 FR 64818, October 22, 2002. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–18, adopted July 24, 2003, and released July 25, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20206 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–105; MB Docket No. 03–105; RM–10671]

Radio Broadcasting Services; Glens Falls, Indian Lake, Malta and Queensbury, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289A for Channel 289B1 at Queensbury, New York, reallots Channel 289A to Malta, New York, and modifies the license for Station WNYQ; reallots Channel 240A from Glens Falls, New York, to Queensbury, New York, and modifies the license for Station WCQL; and allots Channel 290A at Indian Lake, New York, in response to a petition filed by Vox New York, LLC and Entertronics, Inc. *See* 68 FR 28186, May 23, 2003. The coordinates for Channel 289A at Malta are 42–58–58 and 73–48–00. The coordinates for Channel 240A at Queensbury are 43–24–12 and 73–40–25. The coordinates for Channel 290A at Indian Lake are 43–46–57 and 74–16–20. Canadian concurrence has been requested for the allotments at Indian Lake, Malta, and Queensbury, New York. A filing window for Channel 290A at Indian Lake will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order. With this action, this proceeding is terminated.

DATES: Effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–105, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Glens Falls, Channel 240A, by adding Indian Lake, Channel 290A, by adding Malta, Channel 289A and by removing Channel 289B1 and adding Channel 240A at Queensbury.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20208 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2413; MB Docket No. 03–13; RM–10628]

Radio Broadcasting Services; Johnston City and Marion, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 68 FR 5860 (February 5, 2003), this document reallots Channel 297B from Marion Illinois, to Johnston City, Illinois. The coordinates for Channel 297B at Johnston City are 37–45–15 North Latitude and 88–56–05 West Longitude, with a site restriction of 7.4 kilometers (4.6 miles) south of Johnston City, Illinois.

DATES: Effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–13, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Johnston City, Channel 297B and by removing Marion, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20209 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2468; MB Docket No. 03–116]

Radio Broadcasting Services; Archer City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: As the result of a proposal by the Commission, this document substitutes Channel 248C2 for Channel 248C1 at Archer City, Texas. This will conform the FM Table of Allotments to the outstanding construction permit of Texas Grace Communications for Station KRZB, Channel 248C2, Archer City, Texas (BMPH–19900217IB). *See* 68 FR 26556, published May 16, 2003. The reference coordinates for the Channel 248C2 allotment at Archer City, Texas, are 33–51–40 and 98–38–52. With this action, the proceeding is terminated.

DATES: Effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 03–116, adopted July 30, 2003, and released August 1, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals ll, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 248C1 and by adding Channel 248C2 at Archer City.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 03–20214 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 011206293–3182–02; I.D. 101501A]

RIN 0648–AK17

Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a guideline harvest level (GHL) for managing the harvest of Pacific halibut in the guided recreational fishery in International Pacific Halibut Commission (Commission) areas 2C and 3A in and off of Alaska. The GHL establishes an amount of halibut that will be monitored annually in the guided recreational fishery. This action is necessary to allow NMFS to manage more comprehensively the Pacific halibut stocks in waters off Alaska. It is intended to further the management and conservation goals of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Effective September 8, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Gravel-Durall.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or e-mail at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Commission makes recommendations regarding management of the Pacific halibut fishery under the Convention between the United States and Canada. The Commission's recommendations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Additional management regulations that are not in conflict with regulations adopted by the Commission, may be developed by the North Pacific Fishery Management Council (Council) to allocate harvesting privileges among U.S. fishermen.

The Halibut Act provides NMFS, in consultation with the Council, with authority to implement such allocation measures through regulatory amendments approved by the Secretary. In addition to the Commission regulations, the commercial halibut fishery off Alaska is managed under the halibut Individual Fishing Quota (IFQ) Program implemented in 1995.

Each year the Commission staff assesses the abundance and potential yield of Pacific halibut using all available data from the commercial fishery and scientific surveys. Harvest limits for ten regulatory areas are determined by fitting a detailed population model to the abundance and harvest data from each area. A biological target level for total removals in a given area is then calculated by multiplying a fixed harvest rate presently 20 percent to the estimate of exploitable biomass. This target level is called the ''constant exploitation yield'' (CEY) for that area in the coming year. Each CEY represents the target level for total removals (in net pounds) for that area. The Commission then estimates the sport and personal use, subsistence harvests, wastage, and bycatch mortalities for each area. These are subtracted from the CEY and the remaining amount of fish may be set as the catch quota or ''setline CEY'' for each area's directed commercial fixed gear fishery. The setline CEY is a fixed quota, but other removals of fish are not allocated a specific quota.

Harvests by the guided recreational fishery and other non-commercial harvests are thus unrestricted within the CEY because no specific amount is allocated to the guided fishery. This represents an open-ended allocation to the guided recreational fishery from quota available to the commercial halibut fishery. Hence, as the guided recreational fishery expands, its harvests reduce the pounds available to be fished in the commercial halibut fishery and, subsequently, the value of quota shares (QS) in the IFQ Program.

The Council recognized the growth of harvests in the guided recreational fishery and adopted a problem statement in 1995 that recognized that ever increasing harvests in this fishery may make achievement of Magnuson-Stevens Act National Standards more difficult. Of concern was the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource. This policy statement led to the development of a GHL policy that would address allocative concerns in the Council's problem statement. More detail on the development of the GHL policy is provided in the preamble to the proposed rule, published in the **Federal Register** on January 28, 2002 (67 FR 3867).

Development of the GHL

This final rule establishes a GHL policy which specifies a level of harvest for the guided recreational fishery. If the GHL is exceeded, then NMFS will notify the Council within 30 days of receiving information that the GHL has been exceeded. At that time the Council may initiate analysis of possible harvest restrictions and NMFS may initiate subsequent rulemaking to reduce guided recreational harvests. This final rule does not establish specific harvest restrictions for the guided recreational fishery. This final rule does not prevent the Council from recommending management measures before the guided recreational fishery exceeds a GHL, nor does it obligate the Council to take specific action if the GHL is exceeded. Under this GHL policy, NMFS would notify the Council if a GHL for the guided recreational harvests has been met or exceeded.

This final rule is the result of ongoing efforts by the Council to address allocation concerns between the commercial IFQ halibut fishery and the guided recreational fishery. The Council has discussed the expansion of the guided recreational halibut fishery since 1993. In September 1997, the Council adopted two management actions affecting the halibut guided recreational fishery, culminating more than 4 years of discussion, debate, public testimony, and analysis.

First, the Council adopted recording and reporting requirements for the halibut guided recreational fishery. To implement this requirement, the Alaska Department of Fish and Game (ADF&G) Sport Fish Division, instituted a Saltwater Charter Vessel logbook (Logbook) in 1998. It complemented additional sportfish data collected by the State of Alaska (State) through the Statewide Harvest Survey (Harvest Survey), conducted annually since 1977, and the on-site (creel and catch sampling) surveys conducted separately by ADF&G in Southeast and Southcentral Alaska.

The Council's second management action recommended GHLs for the guided recreational halibut fishery in Commission regulatory areas 2C and 3A. The GHLs were based on the guided recreational sector receiving an allocation of 125 percent of its 1995 harvest. This amount was equivalent to 12.76 percent and 15.61 percent of the combined commercial/guided recreational halibut quota in areas 2C and 3A, respectively.

The Council stated its intent that guided recreational harvests in excess of the GHL would not lead to a mid-season closure of the fishery, but instead would trigger other management measures to take effect in years following attainment of the GHL. These measures would restrict the guided recreational fishery and maintain harvests within the GHL allocation. The overall intent was to maintain a stable guided recreational season of historic length, using area-specific harvest restrictions. If end-of-season harvest data indicated that the guided recreational sector likely would reach or exceed its area-specific GHL in the following season, NMFS would implement measures to reduce guided recreational halibut harvest.

Given the one-year lag between the end of the fishing season and availability of that year's harvest data, management measures in response to the guided recreational fleet's meeting or exceeding the GHL would take up to two years to become effective. However, the Council did not recommend specific management measures to be implemented by NMFS if the GHL were reached.

In December 1997, the NMFS Alaska Regional Administrator informed the Council that publishing the GHL as a regulation without specific management measures would have no regulatory effect on the guided recreational fleet. Further, because the Council had not recommended specific management measures by which to limit harvests if the GHL were reached, no formal approval decision by the Secretary would be required for the Council's proposed GHL policy. Hence, a GHL proposed rule would not be developed and forwarded for review by the Secretary.

After being notified that its 1997 GHL policy recommendation would not be submitted for Secretarial review, the Council initiated a public process to

develop potential harvest restrictions to implement if the GHL were exceeded. The Council formed a GHL Committee to recommend alternative management measures for analysis that would constrain guided recreational harvests below the GHL. In April 1999, the Council identified alternatives for analysis.

In February 2000, after 7 years of discussing the guided recreational halibut fishery, the Council adopted a redefined guided recreational GHL and a system of management measures for recommendation to the Secretary. The Council's recommendation would have established a suite of varying harvest restrictions that would be triggered depending on the degree to which the GHL was exceeded. Once the GHL is reached or exceeded, these measures would be implemented by notice published in the **Federal Register**. Essentially, the Council's recommendation included a ''framework'' of restrictions that were explicitly designed to be implemented without proceeding through public notice and comment before becoming effective.

NMFS sent a letter to the Council on April 2, 2002, informing the Council that ''[t]he current framework cannot be implemented as conceived by the Council because the Administrative Procedure Act (APA) requires that any regulatory action have prior notice and opportunity for public comment before becoming effective.''

The notification process described in the proposed rule contemplated compliance with the APA in establishing the framework of harvest restrictions that would be scaled to match the extent to which the guided recreational fishery exceeded the GHL. This framework of potential restrictions, which would be automatically triggered depending on how much the GHL is exceeded, was designed by the Council to minimize the time between exceeding a GHL and the implementation of one or more restrictions. Public comment was specifically invited on the range of restrictions and the link between this range and the level that the guided recreational fishery exceeded the GHL.

This process of implementing pre-conceived and non-discretionary restrictions by notice, depending on how much the GHL is exceeded, however, would not have provided for additional public comment at the time of implementing a restriction. The NMFS letter to the Council indicated that this lack of additional public comment would not be consistent with the APA.

The public comment required by the APA can be waived only for ''good cause.'' The harvest restrictions in the proposed rule likely could not be implemented under the ''good cause'' exemption of the APA. The APA provides for a ''good cause'' finding only when the agency finds that notice and opportunity for public comment would be impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). These terms are narrowly defined. Because this ''good cause'' finding would need to be made at the time the harvest restrictions are implemented, NMFS could not conclude in advance that a ''good cause'' finding would exist in every instance the GHL was exceeded and harvest restrictions triggered. This requirement would effectively undermine the goal of the framework measures to expedite implementation of harvest restriction measures on the guided recreational fishery.

NMFS presented this letter to the Council at its April 2002 meeting, but no action was taken. NMFS sent a second letter to the Council on September 6, 2002, which further clarified factors that may affect the approval of the GHL program and suggested alternative ways to meet the Council's intent.

The September 6, 2002, letter noted that the proposed rule could be approved only if it were changed to explicitly provide for an opportunity for public comment before implementing any harvest restrictions. This change would increase the amount of time between when the GHL is exceeded and implementing any harvest restrictions, because the APA rulemaking process would require an analysis of alternatives to the proposed harvest restrictions recommended by the Council under the requirements of the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order (E.O.) 12866 (which requires a Regulatory Impact Review), and other applicable laws.

The Council discussed this letter in October 2002. The Council indicated that its preferred course of action would be to implement the GHL policy as a rule and to develop possible harvest restriction measures as necessary at a later time through a separate analytical and rulemaking process. Under this scenario, the Council would undertake its usual process of forwarding recommendations to NMFS based on analysis of alternatives each time recreational guided harvests exceed the GHL.

On December 2, 2002, NMFS informed the Council by letter that NMFS intended to proceed as recommended by the Council in October, with a final rule to implement the GHL policy without the associated harvest restriction measures. NMFS presented this letter to the Council at its December 2002 meeting. This letter noted that if the GHL were exceeded, subsequent harvest restrictions could be implemented as needed under normal APA rulemaking with the accompanying analyses (e.g., EA/RIR/IRFA). In other words, this final rule would establish the GHL policy and require NMFS to notify the Council when a GHL is exceeded, which could serve as a trigger for subsequent rulemaking.

Hence, this final rule deviates from the proposed rule (January 28, 2002, 67 FR 3867) by omitting all of the proposed restrictions. The specific changes in this final rule from the proposed rule are described in the Changes from the Proposed Rule section of this final rule.

Guideline Harvest Level

The GHL establishes a pre-season estimate of acceptable annual harvests for the guided recreational halibut fishery in Commission areas 2C and 3A. To accommodate limited growth of the guided recreational fleet while approximating historical harvest levels, the GHL for each area is based on 125 percent of the average of 1995–99 guided recreational harvest estimates as reported by the ADF&G's Harvest Survey. The average harvest during the 1995–1999 time period was chosen as being representative of recent trends in guided fishery harvests with the additional 25 percent over this average added to accommodate limited future growth based on estimated guided fishery harvest trends. The GHLs equal 1,432,000 lb (649.5 mt) net weight in area 2C, and 3,650,000 lb (1,655.6 mt) net weight in area 3A. These amounts equate to 13.05 percent, and 14.11 percent, respectively, of the combined guided recreational and commercial allowable harvest.

The GHLs are established as a total maximum poundage, which is responsive to annual reductions in stock abundance. In the event of a reduction in either area's halibut stocks, as determined by the Commission, the area GHL is reduced incrementally in a stepwise fashion in proportion to the stock reduction. The GHL is reduced by fixed percentages if the stock abundance falls below the average 1999–2000 stock abundance. The 1999–2000 time frame was chosen because these were the two years most recent to the Council's action.

To compare the stock abundance among years using a uniform measure, the stock abundance will be compared to the average 1999–2000 CEY using the CEY established for that year by the Commission. The CEY is the total target biomass that may be removed each year. The Commission sets the CEY based on the best available information and the professional judgment of the Commission. As such, it may reflect uncertainty, or changes in the stock assessment modeling. However, comparing the CEY each year to the average 1999–2000 CEY, provides the best available measure of stock abundance trends between years.

The GHL in each area is reduced in stepwise increments based on a reduction in the CEY. This reduction would occur the year following the availability of the data indicating that a GHL in a given area has been exceeded. This stepwise incremental reduction was chosen by the Council to provide some consideration for the natural variability of halibut stocks and not require the adoption of a new GHL every year if the stock varies only slightly. For example, if the halibut stock in area 2C were to fall from 15 to 24 percent below its 1999–2000 average CEY, then the area 2C GHL would be reduced by 15 percent from 1,432,000 lb (649.5 mt) to 1,217,200 lb (552.1 mt). If the Area 2C stock abundance were to fall at least 25 to 34 percent, then the GHL would be reduced by an additional 10 percent from 1,217,200 lb (552.1 mt) to 1,095,480 lb (496.9 mt). If the stock abundance continued to decline by at least 10 percent increments, the GHL in Area 2C would be reduced by an additional 10 percent once the stock abundance was reduced by at least 10 percent.

If abundance returns to its pre-reduction level (the 1999–2000 average CEY), the GHL would be stepped back up in the following year by commensurate incremental percentage points to its initial level of 125 percent of the average of 1995–99 guided recreational harvest estimates. As an example, if the Area 2C stock abundance was 19 percent lower than the 1999–2000 average stock abundance, the GHL would be 15 percent lower than the initial level. The Area 2C GHL would be 1,217,200 lbs. (552.1 mt). If the stock abundance in Area 2C increased by 15 percent over this level, the GHL in Area 2C would be stepped up to its maximum initial level of 1,432,000 lbs (649.5 mt).

If halibut stock abundance were to increase above its 1999–2000 average CEY, then the GHL would never exceed its initial level of 1,432,000 lb (649.5 mt) in Area 2C and 3,650,000 lb (1,655.6 mt) in Area 3A. Setting the GHL at a maximum of 125 percent of the 1995–1999 harvest estimates would allow for limited growth of the guided recreational fishery, but would effectively limit further growth at this level. The Council chose not to provide a mechanism to increase the GHL above this initial level if the stock abundance increases. The Council clarified that its goal for the GHL was to provide a limit on the total amount of harvests in the guided fishery that would be designated as a fixed poundage based on an amount equal to 125 percent of the average 1995–1999 harvests. This amount was set higher than existing harvest levels to accommodate some future growth in the recreational sector. The Council stated its intent that the GHLs would not close the fishery, but instead would trigger other management measures in years following attainment of the GHL. The overall intent was to maintain a stable guided recreational fishery season of historic length, using area-specific measures.

Once the Commission determines the stock abundance for the year during its January meeting, NMFS will review the Commission's CEY relative to the baseline 1999–2000 average CEY and announce the GHL for the year in the **Federal Register** by notice before the beginning of the guided fishery. If the GHL is exceeded in any year, then NMFS will notify the Council in writing that the GHL has been exceeded as soon as that information is available. Currently, the only source of information on guided recreational harvests comes from the Harvest Survey. The final results from the Harvest Survey are typically available by August of the year following the survey. Under this data collection system, NMFS would not have data that the GHL was exceeded until eight months after the end of the prior guided recreational season. NMFS has established a contract to develop a data collection system independent of the State's Harvest Survey. That system is still under development.

Changes from the Proposed Rule

This final rule does not implement the framework harvest restrictions recommended by the Council and published in the **Federal Register** as a proposed rule on January 28, 2002 (67 FR 3867). The final rule regulatory text includes: (1) the GHL in Areas 2C and 3A; (2) the mechanism for reducing the GHL in years of low abundance as determined by the Commission; (3) a requirement for NMFS to publish the GHL on an annual basis in the **Federal Register**; and (4) a requirement for NMFS to notify the Council in writing within 30 days of receiving information that the GHL has been exceeded. At that time, the Council may choose to initiate an analysis of alternative management restrictions on the guided recreational fishery and propose harvest reduction restrictions through the usual APA rulemaking process.

This final rule also revises the regulatory language to better clarify the mechanism for reducing the GHLs if the stock abundance declines. This change does not modify the intent or effect of the language in the proposed rule but improves its readability and accuracy. The final rule also removes the definition of ''guided recreational vessel'' because existing regulations (at 50 CFR 300.61) define a ''charter vessel'' and an additional definition would be duplicative. This change does not modify the intent or effect of the language in the proposed rule. The term ''guided recreational fishery'' is used in the preamble to the proposed rule because that term has been used consistently throughout the analytical process. Retaining the term in this final rule assists the public by maintaining consistent terminology.

The suite of harvest restrictions recommended by the Council and published in the proposed rule may be one of the alternatives that is analyzed in subsequent rulemaking if the GHL is exceeded. The Council may choose other reasonable alternative harvest reduction restrictions if the GHL is exceeded.

The specific regulatory language in the proposed rule that is not implemented in this final rule includes: (1) the suite of harvest restrictions that would apply if the GHL were exceeded; (2) the notification process for implementing the harvest restriction measures; and (3) regulatory language that would require the Council to review the harvest restriction measures after their implementation to evaluate their efficacy in preventing further excess harvests and recommend that NMFS adjust those measures as necessary to ensure that the following season's harvest levels do not exceed the GHL.

This final rule imposes no restrictions on the guided recreational fishery as outlined in the proposed rule. This change from the proposed rule is necessary to address concerns raised about the ability to implement the harvest restriction measures without providing opportunity for public comment under APA rulemaking procedures.

The effect of removing this regulatory language in this final rule is to establish the GHL as a notification to the Council for consideration of possible subsequent rulemaking, but not to establish specific harvest restriction measures. While this change substantially modifies the regulatory language in the proposed rule, it does not impose new restrictions on the guided recreational fishery. The only regulatory effect of this action is to codify the GHL policy, require the publication of the GHL on an annual basis in Areas 2C and 3A, and to require NMFS to notify the Council if the GHL is exceeded.

Response to Comments

The proposed rule was published in the **Federal Register** on January 28, 2002 (67 FR 3867), and invited public comments until February 27, 2002. NMFS received 241 public comments.

Letters Supporting the Proposed Rule

NMFS received 228 letters that supported, either in whole or in part, the adoption of the proposed rule to implement a GHL and associated management measures for the guided halibut fishery. These comments do not provide specific suggestions or comments on modifying the proposed rule, but urge its Secretarial approval. Therefore, the supportive comments summarized are not individually addressed and responded to in this action.

Many of the public comments supporting the proposed rule are form letters from individual commercial fishermen that urge NMFS to approve the proposed rule. Approximately half of these letters also contain personalized information on the specific nature of the individual's commercial fishing operation and how that individual would be harmed if the proposed rule were not adopted. NMFS received seven letters that support the adoption of the proposed rule from organizations representing fishermen or processors. NMFS also received one petition signed by 69 individuals supporting the GHL proposed rule. The individuals signing the petition indicated they owned or operated vessels primarily homeported in Homer, Alaska. Based on a review of the names on the petition, most of these individuals did not submit separate personal letters.

NMFS received three letters from resident sport anglers who expressed support for the GHL as a means to control effort in the fishery and ensure sport fishing opportunities for local residents. One commercial fisherman and guided recreational lodge owner catering to guided recreational fishery clients also expressed support for the GHL proposed rule as a means to curtail effort that could adversely affect his lodge operations.

The principal reasons given for supporting the proposed rule in these letters were that it would:

(1) Establish an equitable allocation between sport and commercial harvests;

(2) Provide additional security for commercial fishermen who have invested in the IFQ Program and believe that they should be provided a stable percentage of the total halibut resource; and

(3) Provide a control on guided recreational fishery harvests in nearshore waters that are used by smaller commercial vessels.

Many of the letters noted that commercial fishermen have made substantial investments in the IFQ program and the lack of controls on guided recreational fishery harvests will compromise their investment because no explicit controls exist on the future growth of the guided recreational harvests relative to the commercial fishery. Other letters noted that consumers would benefit from a healthy commercial resource and not all individuals can afford a guided fishing experience if they want to eat Pacific halibut from Alaska. Several letters indicated that the value of commercial fisheries extends to the numerous services (e.g., grocery stores, supply stores) that commercial fisheries support in small rural communities. Other letters noted that localized depletion by guided recreational vessels is a concern and must be controlled. Some letters mention that guided recreational operators are in fact ''commercial fishermen'' because they derive their income by their ability to find fish for their clients to harvest. Several letters indicate that the Council process that resulted in the recommendation to adopt a GHL for the guided recreational fishery fleet was a long, open process, that allowed ample public participation.

Generally, these letters express support for the Secretary's decision to publish the proposed rule and proceed with the GHL. A number of the comments are no longer pertinent given the restructuring of the final rule to remove the frameworked harvest restrictions.

Letters Opposing the Proposed Rule

NMFS received 12 letters opposing the establishment of a GHL. The authors of all of these letters identified themselves as guided recreational fishermen. Writers of these 12 letters made 10 unique comments on the proposed rule.

Most of these comments specifically address the harvest restriction measures that were part of the proposed rule but are not included in this final rule. These comments may no longer be pertinent given the removal of the harvest restriction framework.

Comment 1: The guided recreational fishery harvests comprise a relatively small portion of overall harvest of halibut in Areas 2C and 3A. The percentage of harvest is not increasing, and controls or other limits on the guided fishery are not needed.

Response: This rule does not impose any restrictions on the guided fishery, but serves to notify the public of the GHLs on an annual basis and to notify the Council when the GHL is exceeded. The Council recommended that NMFS allocate resources between the guided recreational and commercial sectors to address longstanding concerns raised by the absence of a specific allocation of the halibut resource to the guided recreational sector. Although this rule does not directly implement harvest restrictions, establishing an upper limit of harvest for the guided recreational fishery is appropriate and necessary if the commercial and guided recreational fleets wish to maintain the existing harvest distributions between these sectors.

The GHL was explicitly designed to allow a limited degree of growth in the guided recreational fishery without reallocating the historic distribution of harvests between the commercial and recreational sectors. The guided fishery has not yet met or exceeded the proposed GHL in either Area 2C or 3A.

Comment 2: Guided recreational fishery operations provide a greater economic benefit to Alaska and rural communities than the commercial fishery and the GHL would impede this economic benefit and the exercise of free-markets.

Response: This analysis is provided in the EA/RIR/IRFA, and indicates that the relative economic impacts of implementing harvest restrictions may vary depending on the measures used, area, and particular aspects of the fishery operation. This analysis did not explicitly indicate that guided recreational fishery operations uniformly provided a greater economic benefit to Alaska and rural communities. This final rule does not impose harvest restrictions on the guided fishery, however, and is not expected to have a direct economic effect on the guided fishery.

NMFS considered the economic effects of this regulation, among other

factors. Economic value of the fishery is one basis for making an allocation decision, but not the only consideration. The Halibut Act requires consideration of a range of factors when recommending new management measures, such as the GHL, that allocate or assign halibut fishing privileges among various United States fishermen. The Halibut Act requires that such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

Comment 3: The GHL will not conserve the resource. The EA/RIR/IRFA prepared for the GHL proposed rule states that ''the [Commission] has determined that resource conservation is not a factor in such allocative decisions,'' and by implication establishing a GHL based on concerns about possible localized depletion of the halibut resource are inappropriate.

Response: In 1993, the Council became concerned about both localized depletion and ''the potential reallocation of greater percentages of the CEY from the IFQ fishery to the guided recreational fishery ''(*See* 67 FR 3867, January 28, 2002). While the EA/RIR/IRFA notes that ''the effect on the halibut resource of allocating halibut between user groups is negligible,'' it also notes that ''if there was a resource conservation concern, the [Commission] would be the responsible management body, however, since this is an allocative issue, the management responsibility is delegated to the Council.''

The EA/RIR/IRFA notes that ''while there may be biological concerns associated with localized depletion of halibut stocks, the guided recreational fishery sector may not be the only contributor to localized depletions. In summary, none of the alternatives would be expected to have a significant impact on the environment.'' This indicates that the basis for this action is largely one based on concerns for allocation and that the potential effect of this action on the environment is not significant. The commenter correctly notes that the EA/RIR/IRFA does not provide conclusive evidence of localized depletion attributable to the guided recreational fleet.

Although concerns about the potential effects of the guided fishery on localized depletion of halibut stocks may have diminished over the past several years while the Council considered this action and NMFS developed this final rule, the allocative concerns have not. The Council and NMFS have the authority and responsibility to address allocation concerns. This rule addresses those concerns by establishing a mechanism for notifying the Council that it may wish to consider additional rulemaking to restrict the guided recreational fleet if the GHL is exceeded.

Comment 4: The GHL could constrain harvests and force guided recreational fishery vessels to target other stocks (e.g., salmon and lingcod) that may be fully exploited. The EA/RIR/IRFA notes that ''other species of salmon, as well as rockfish and lingcod stocks would be impacted if guided recreational fishery operators increased their fishing effort on these stocks in response to a GHL on halibut. ADF&G has expressed conservation concerns for lingcod and rockfish stocks in most areas of Southeast Alaska. Based on these concerns the Board has adopted very restrictive regulations for yelloweye rockfish in the Sitka and Ketchikan areas and for lingcod in the Sitka area. Increased exploitation by the guided sector due to a GHL would add to these conservation concerns.''

Response: The implementation of the GHL without any regulatory restrictions would not be expected to have any distributional effects on the guided fishery fleet, and is not expected to have a significant effect on the human environment. Additionally, ADF&G and the Board may choose to implement additional management measures if the implementation of the GHL is perceived to have an adverse effect on state managed resources. At the time that any additional management measures are developed, those considerations may be addressed.

Comment 5: The GHL proposed rule contradicts NMFS' commitment to promote recreational fisheries under E.O. 12962. (E.O. directing Federal agencies to enhance recreational fishing opportunities).

Response: This rule does not diminish that productivity or countermand the intent of E.O. 12962. Because this final rule does not impose any regulatory restrictions on the guided recreational fishery it would not limit or otherwise curtail participation in the guided recreational fishery. E.O. 12962 was signed in 1995, and directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities ''to the extent permitted by law and where practicable.'' This E.O. does not diminish NMFS' responsibility to address allocation issues, nor does it require that NMFS or the Council limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries.

Comment 6: The Council developed the proposed rule without any consideration of analysis of potential socio-economic impacts.

Response: The EA/RIR/IRFA analyzes, among other issues, the socio-economic impacts of the proposed rule for the GHL and the associated harvest restriction measures. This analysis addresses the potential socio-economic impacts of the GHL proposed rule using the best available data. The FRFA prepared for this final rule reviews the economic effects of this final rule.

Comment 7: Public access to the resource will be diminished by the implementation of the GHL.

Response: This rule does not limit guided recreational harvests or public access to fishery resources. This rule serves only to notify the public on an annual basis of the GHLs in Areas 2C and 3A, to codify the GHL policy and to provide a mechanism for NMFS to notify the Council once the GHL has been exceeded.

Comment 8: The accuracy of the Logbook data used to determine the GHL is suspect, should not have been used in this process, and should not be used in any future management decisions. The author of the letter notes that in a September 2001 memorandum, ADF&G raised some concerns about the use of Logbook data for management purposes.

Response: The GHL is based on 125 percent of the average of 1995–1999 guided recreational harvests using data gathered from the ADF&G Harvest Survey. The GHL is not based on data from the Logbook. The Harvest Survey is considered accurate for purposes of estimating guided recreational harvests on a fleetwide basis. ADF&G is no longer collecting data on halibut harvests using the Logbook. Fleetwide harvests would be monitored relative to the GHL using the Harvest Survey. Because this rule does not implement harvest restriction measures, data from the Logbook would not be used to implement this final rule. NMFS currently is reviewing alternative means of gathering data for collecting data and monitoring harvests in the guided recreational fleet for other management purposes.

Comment 9: The absence of Logbook data will not allow NMFS to implement any possible GHL restrictions without a two-year delay, which is unacceptable.

Response: The EA/RIR/IRFA indicated that the Harvest Survey could be used and the one-year lag between the end of the fishing season and availability of that year's harvest data was anticipated as was the possibility that it would take up to two years for management measures to be implemented. This final rule does not implement harvest restrictions and Logbook data are not required for monitoring fleetwide harvests. NMFS currently is reviewing alternative data collection methods for the guided recreational fleet and reduce this delay between exceeding the GHL and notification of the Council. These data collection methods would supplement the existing Harvest Survey and provide additional information on fleetwide and individual vessel harvests.

Comment 10: The proposed rule does not provide a mechanism for the GHL to increase if the stocks increase and therefore limits guided recreational harvests if halibut abundance increases. This would limit the guided recreational fleet to a smaller percentage of the overall available exploitable biomass relative to the commercial fleet. The GHL should be modified to increase during periods of higher stock abundance.

Response: The goal for the GHL is to provide a limit on the total amount of harvests in the guided fishery that would be designated as a fixed poundage based on an amount equal to 125 percent of the average 1995–1999 harvests. This amount was set higher than existing harvest levels to accommodate some future growth in the recreational sector. The intent is not to close the fishery, but additional management measures may be triggered in years following attainment of the GHL. The overall intent was to maintain a stable guided recreational fishing season of historic length, using area-specific measures.

The GHL is not a fixed percentage of the total halibut biomass available for exploitation and it was not envisioned that the GHL would increase if stock abundance increased. The decision to fix the GHL at a maximum level with some reduction in the GHL as stock abundance decreases was based on several factors including: (1) Halibut are believed to be at high abundance but are declining, according to recent Commission stock assessments, making it unlikely that stock abundance will increase; (2) the current level of harvests by the guided recreational sector are below the GHLs in both Area 2C and 3A; and (3) public comment received during the Council deliberations advocated setting the GHL as a fixed poundage that would be adjusted in a stepwise fashion if abundance decreases.

Based on these factors, the GHL is not designed to increase if stock abundance increases. However, this final rule does not impose specific harvest restrictions if the GHL is exceeded. If stock abundance does increase and the GHL is exceeded in a specific area, then the Council can review the appropriateness of pursuing additional subsequent rulemaking at that time, including a review of the mechanism used to set the GHL.

State Comments on the Proposed Rule

The ADF&G also provided written comments on the proposed rule.

Comment 1: The description of CEY in the preamble to the proposed rule as it relates to total allowable harvests is incorrect.

Response: The preamble to the proposed rule described the CEY as a specific allocation to the commercial fishery, which is not accurate. The statement in the preamble to this final rule has been corrected to more accurately describe CEY as an estimate of the total allowable harvests, including harvests by the guided fishery, sport anglers, and as bycatch in other fisheries.

Comment 2: The preamble to the proposed rule does not adequately define how stock biomass is defined. Differences exist between the Commission model estimates of CEY and the setline CEY actually approved by the Commission for the commercial fishery. These differences could affect how stock abundance is measured and applied relative to the GHL.

Response: The Commission determines the total biomass based on a variety of model estimates, data sources, and consideration of uncertainty in the model estimates. The proposed rule did not specify the particular method that would be used to estimate changes in stock biomass and model estimates may vary among years. An appropriate measure is the CEY. The CEY is a numerical determination of the amount of biomass available for total removals (i.e., harvests, bycatch) from the fishery.

The CEY incorporates uncertainty that may exist in the fishery stock assessment models and may vary from the stock assessment models based on the professional judgment of the Commission. The CEY reflects the amount of biomass available for harvest on an annual basis and is therefore a reasonable proxy for comparing stock abundance on an interannual basis. The CEY is distinct from the ''setline CEY'' which is the specific catch limit for the commercial fishery, and is a portion of the overall CEY. The final rule has been modified from the proposed rule to clarify that the CEY will be used as the means for comparing stock abundance among years.

Comment 3: The proposed rule does not specifically address localized depletion concerns that are described in the Council's Problem Statement which guided the development of this proposed rule. The proposed rule does not address these concerns because the GHL and associated harvest restriction measures would apply on an area-wide basis.

Response: This action does not directly resolve all of the problems raised in the Problem Statement adopted by the Council. This final rule does not impose harvest restrictions and the specific management measures which may address any possible localized depletion would need to be developed by additional future rulemaking.

At the time the Council developed the Problem Statement, it was concerned about the potential adverse effects of localized depletion and cited localized depletion as well as allocation debates as problems in the management of the guided halibut fishery. The EA/RIR/IRFA indicated that localized depletion may not be as great of a concern as originally assumed. Allocation issues also are addressed by the proposed rule. Because this final rule does not impose harvest restriction measures, it would not address potential localized depletion.

Comment 4: The preamble to the proposed rule does not provide adequate consideration of overall economic efficiency and the impact of this rule on the guided recreational halibut fishery.

Response: The preamble to the proposed rule notes that the Council prepared an EA/RIR/IRFA that examines the economic effect of this rule. The EA/RIR/IRFA notes that the economic effects on the guided recreational fishery were calculated with the best available data which was limited for some aspects of the analysis. The preamble to the proposed rule provides a brief review of the effects of this action on economic efficiency. The preamble to the proposed rule refers the reader to the EA/RIR/IRFA for additional discussion. An FRFA was prepared and it addresses the economic impacts of this final rule.

Comment 5: Logbook data should not be used for the estimation of harvests or management of the guided recreational fishery.

Response: This final rule does not rely on the Logbook for monitoring the GHL. The Harvest Survey will be used to estimate annual harvests by the guided recreational fleet since the Logbook no longer collects data on halibut harvest in the guided recreational fleet. NMFS is exploring the development of a data collection system to augment the Harvest Survey. This final rule does not implement harvest restrictions and data on individual vessel harvests are not required at this time.

Comment 6: The mechanism for implementing the harvest restriction measures without the use of the Logbook for monitoring and enforcement is unclear.

Response: This final rule does not impose harvest restrictions on the guided recreational fleet. As stated earlier, NMFS is in the process of developing a new data collection program for the guided recreational fishery. That program could be used if the Council were to recommend, and the Secretary were to adopt, any additional management measures during subsequent rulemaking.

Classification

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (*see* **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused on a range of issues. Specifically, many comments addressed issues related to the implementation of a framework of harvest restriction measures which are no longer a part of this final rule. These comments are addressed in detail in the preamble. For a summary of the comments received, refer to the section above titled ''Comments and Responses.''

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here. The final rule has been modified from the proposed rule and the number of small entities to which the rule will apply has been affected by these changes. As noted in the preamble, no entities are directly regulated by this action. This action serves as a notification for the public and the Council that a specific harvest level has been reached. NMFS provides this notification process and no small entities are regulated once a GHL is reached without additional action by the Council and NMFS. This FRFA is being undertaken because an IRFA was prepared for the proposed rule which contained measures that would have regulated small entities. Those measures are no longer part of this final rule.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

A description of projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

This rule would (1) establish the GHL in Areas 2C and 3A; (2) describe the mechanism for reducing the GHL in years of low abundance as determined by the Commission; (3) establish a requirement for NMFS to publish the GHL on an annual basis in the **Federal Register**; and (4) require NMFS to notify the Council in writing within 30 days of receiving information that the GHL has been exceeded. The potential economic impacts of these measures are described in detail in the IRFA and IRFA summary contained in the classification section of the proposed rule and in the preamble of this final rule. This action does not directly regulate small entities and would not have an impact on those entities. No measures were taken to reduce impacts on small entities beyond those already taken with the development of alternatives in the IRFA. The IRFA considered an alternative that would have maintained the status quo. The regulatory effect described in this action is effectively the same as the no action alternative developed in the IRFA.

NMFS is not aware of any alternatives in addition to those considered in this action that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while further minimizing the economic impact of the rule on small entities. The impact on small entities under this action is the same as the status quo for the small entities in the Pacific halibut and sablefish IFQ fisheries and the guided halibut recreational fishery.

The IRFA analyzed alternatives that would have established a series of frameworked harvest restriction measures as well as a moratorium on new participants to the guided recreational halibut fishery as well as the no-action alternative. The no action alternative would have resulted in no changes to existing fishing patterns by the guided recreational fleet. This alternative was not chosen, however, in order to implement the GHL policy and notification process described in this proposed rule. The net economic effect of this action is the same as the no action alternative. The analysis supporting this statement is provided in the IRFA and is not repeated here.

The IRFA also examined an alternative that would have implemented a series of frameworked harvest restriction measures if a GHL were exceeded. This alternative would have been expected to result in more significant economic impacts on guided recreational vessels than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here.

The IRFA also examined an alternative that would have implemented a moratorium on new participants in the guided recreational fishery. This alternative would have been expected to result in more significant economic impacts on guided recreational vessels than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This paragraph serves

as the small entity compliance guide. Small entities are not required to take any additional actions to comply with this action. NMFS will publish the GHL on an annual basis and notify the Council if the GHL is exceeded. These actions do not require any additional compliance from small entities. Copies of this final rule are available from NMFS (*see* **ADDRESSES**) and at the following web site: *http://www.fakr.noaa.gov/*

Need for and Objectives of the Final Rule

This final rule is necessary to implement a GHL policy. The intent of this final rule is to notify the Council that a specific level of harvest has been achieved by the guided recreational fishery. This action is consistent with the provisions of the Halibut Act.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule complies with the Halibut Act and the Council's authority to implement allocation measures for the management of the halibut fishery.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 4, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. Section 300.61 is amended by adding, in alphabetical order, the following definitions for ''guideline harvest level'' and ''halibut harvest'' to read as follows:

§ 300.61 Definitions.

* * * * *

Guideline harvest level (GHL) means a level of allowable halibut harvest by the charter vessel fishery.

Halibut harvest means the catching and retaining of any halibut.

* * * * *

■ 3. In § 300.65, paragraph (i) is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(i) *Guideline harvest level.* (1) The annual GHLs for regulatory areas 2C and 3A are determined as follows:

If the Annual Total Constant Exploitation Yield for Halibut in Area 2C is More Than:	Than the GHL for Area 2C will be:	If the Annual Total Constant Exploitation Yield for Halibut in Area 3A is More Than:	Than the GHL for Area 3A will be:
(i) 9,027,000 lbs. (4094.5 mt)	1,432,000 lbs. (649.5 mt)	21,581,000 lbs. (9,788.9 mt)	3,650,000 lbs. (1655.6 mt).
(ii) 7,965,000 lbs. (3612.9 mt)	1,217,000 lbs. (552.0 mt)	19,042,000 lbs. (8637.3 mt)	3,103,000 lbs. (1407.0 mt).
(iii) 6,903,000 lbs. (3,131.2 mt)	1,074,000 lbs. (496.7 mt)	16,504,000 lbs. (7,485.9 mt)	2,734,000 lbs. (1266.4 mt).
(iv) 5,841,000 lbs. (2,649.4 mt)	931,000 lbs. (447.2 mt)	13,964,000 lbs. (6334.0 mt)	2,373,000 lbs. (1,139.9 mt).
(v) 4,779,000 lbs. (2,167.7 mt)	788,000 lbs. (357.4 mt)	11,425,000 lbs. (5,182.3 mt)	2,008,000 lbs. (910.8 mt).

(2) NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3B for that calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.

(3) If the GHL in either Area 2C or 3A is exceeded, NMFS will notify the Council in writing that the GHL has been exceeded within 30 days of receiving information that the GHL has been exceeded.

[FR Doc. 03–20285 Filed 8–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030514123–3162–02; I.D. 041003B]

RIN 0648–AQ76

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan; Correcting Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issued a final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. The final rule implementing Framework 38 was published in the **Federal Register** on July 9, 2003. One of the coordinates contained in the Gulf of Maine (GOM) Grate Raised Footrope Trawl Whiting Fishery Exemption Area table was incorrect. NMFS published a correcting amendment on July 25, 2003. However, in the correction document, the headings in the three columns of the table, GOM Grate Raised Footrope Trawl Whiting Fishery Exemption Area, are incorrect. This document corrects those errors.

DATES: This regulation is effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Need for the Correction

The final rule implementing measures contained in Framework 38 to the FMP was published in the **Federal Register** on July 9, 2003 (68 FR 40810), and became effective on the date of publication. The North Latitude coordinate for Point GRF5 (44° 58.5′) in the table, GOM Grate Raised Footrope Trawl Whiting Fishery Exemption Area, contained in § 648.80(a)(16), was incorrect in the final rule document. A final rule; correcting amendment was published in the **Federal Register** on July 25, 2003 (68 FR 43974). That document corrected the North Latitude coordinate for Point GRF5, which is 43° 58.8′. However, in the correction document published July 25, 2003, the headings contained in the table in § 648.80(a)(16) were incorrect.

Therefore, because the final rule published on July 25, 2003, which was the subject of FR Doc. 03–18894, contained incorrect table headings in § 648.80(a)(16), on page 43974, in the first column of the table the column heading ''Point N.'' is removed and in its place ''Point'' is added. In the second column of the table the column heading ''Lat.W.'' is removed and in its place ''N. Lat.'' is added. In the third column the heading ''Long.'' is removed and in its place ''W. Long.'' is added.

This document corrects the table under § 648.80(a)(16) as follows:

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 50 CFR part 648 is correctly amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.80, the table contained in paragraph (a)(16) is corrected to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(16) * * *

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF1	43° 15′	70° 35.4′
GRF2	43° 15′	70° 00′
GRF3	43° 25.2′	70° 00′
GRF4	43° 41.8′	69° 20′
GRF5	43° 58.8′	69° 20′

* * * * *

Dated: August 4, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–20286 Filed 8–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 080103A]

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of ''other rockfish'' in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of ''other rockfish'' in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the ''other rockfish'' 2003 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of the ''other rockfish'' TAC in the Central Regulatory Area was established as 550 metric tons by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the ''other rockfish'' TAC in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of ''other rockfish'' in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the prohibition of retention, lead to exceeding the TAC of ''other rockfish'' in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–20278 Filed 8–5–03; 3:10 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 080103B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker/rougheye rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker/rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the shortraker/rougheye rockfish 2003 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of the shortraker/rougheye rockfish TAC in the Central Regulatory Area was established as 840 metric tons by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the shortraker/rougheye rockfish TAC in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker/rougheye rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the prohibition of retention, lead to exceeding the TAC of shortraker/rougheye rockfish in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–20279 Filed 8–5–03; 3:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 153
Friday, August 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331–10 and –11 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to adopt a new airworthiness directive (AD) that applies to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331–10 and –11 series turboprop engines with certain part numbers and serial numbers of first stage turbine disks. This proposal would require initial and repetitive fluorescent penetrant inspections (FPIs) and eddy current inspections (ECIs) of the affected first stage turbine disks. This proposal is prompted by a report of a first stage turbine disk found cracked at the disk bore. We are proposing this AD to prevent cracked first stage turbine disks from causing uncontained disk separation, resulting in engine damage and shutdown.

DATES: We must receive any comments on this proposed AD by October 7, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may get the service information identified in this proposed AD from Honeywell Engines, Systems & Services, Technical Data Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation); (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial).

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–02–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On October 23, 2001, the FAA received a report of a first stage turbine disk, part number (P/N) 3101520–1, found cracked in the bore area. The manufacturer's investigation verified that the crack originated from a localized, melt related, low alloy area of the disk. The manufacturer has determined that certain serial numbers (SNs) of P/N 3101520–1 first stage turbine disks, produced from the same forging billet, may also contain localized, melt related, low alloy areas. Some of the P/N 3101520–1 disks produced from this same forging billet were later converted to P/N 3107079–1 first stage turbine disks. Therefore, certain SNs of P/N 3107079–1 first stage turbine disks also may contain localized, melt related, low alloy areas. At the time of conversion, however, P/N 3107079–1 first stage turbine disks received an initial FPI and ECI, so these disks only require repetitive inspections. This condition, if not corrected, could result in uncontained disk separation, resulting in engine damage and shutdown.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2102, dated March 28, 2002, that describes procedures for initial and repetitive FPI of the SNs of first stage turbine disks, P/N 3101520–1, and for only repetitive FPI of the SNs of disks, P/N 3107079–1 listed in Table 1 of the ASB. For disks that pass FPI, the ASB also requires that those disks pass ECI.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require initial and repetitive FPIs of the SNs of first stage turbine disks P/N 3101520–1,

and only repetitive FPIs of the disks P/N 3107079–1 listed in Table 1 of the ASB, and for disks that pass FPI, perform an ECI. The proposed actions would be required to be done in accordance with the ASB described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 72 TPE331–10 and –11 series turboprop engines of the affected design in the worldwide fleet. We estimate that 36 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We estimate that it would take approximately 5 work hours per engine to perform the proposed disk inspections during a scheduled disassembly, and 40 work hours per engine to perform the proposed disk inspections for an unscheduled disassembly. The average labor rate is $65 per work hour. Required parts would cost approximately $5,000 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators for disassembly, inspections, and part replacement is estimated to be $105,300.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–02–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona): Docket No. 2003–NE–02–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by October 7, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–10–501C, –10–511C, –10–501K, –10–511K, –10–501M, –10–511M, –10AV–511B, –10AV–511M, –10GP–511D, –10GT–511D, –10N–511S, –10N–512S, –10N–513S, –10N–514S, –10N–515S, –10N–531S, –10N–532S, –10N–533S, –10N–534S, –10N–535S, –10P–511D, –10R–501C, –10R–502C, –10R–511C, –10R–512C, –10R–513C, –10T–511D, –10T–511K, –10T–511M, –10T–512K, –10T–513K, –10T–515K, –10T–516K, –10T–517K, –10U–501G, –10U–502G, –10U–511G, –10U–512G, –10U–503G, –10U–513G, –10UA–511G, –10UF–501H, –10UF–511H, –10UF–512H, –10UF–513H, –10UF–514H, –10UF–515H, –10UF–516H, –10UG–513H, –10UG–514H, –10UG–515H, –10UG–516H, –10UGR–513H, –10UGR–514H, –10UGR–516H, –10UR–513H, –10UR–516H, –11U–601G, –11U–602G, –11U–611G, and –11U–612G turboprop engines with first stage turbine disk part number (P/N) 3101520–1 or P/N 3107079–1, with serial numbers (SNs) listed in Table 1 of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2102, dated March 28, 2002. These engines are installed on, but not limited to Mitsubishi MU–2B series, Construcciones Aeronauticas S.A. (CASA) C–212 series, Fairchild SA226 series (Swearingen Merlin and Metro series), Twin Commander 680 and 690 series (Jetprop Commander), Dornier 228 series, Beech 18 and 45 series, Beech Models JRB–6, 3N, 3TM, and B100, Cessna Aircraft Company Model 441 Conquest, and Jetsteam 3201 series airplanes.

Unsafe Condition

(d) This AD is prompted by a report of a first stage turbine disk found cracked at the disk bore. We are issuing this AD to prevent cracked first stage turbine disks, part number (P/N) 3101520–1 or P/N 3107079–1, with serial numbers listed in Table 1 of Honeywell International Inc. ASB TPE331–A72–2102, dated March 28, 2002, from causing uncontained disk separation, resulting in engine damage and shutdown.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection

(f) Perform a fluorescent penetrant inspection (FPI) of first stage turbine disks, P/N 3101520–1, in accordance with 2.A.(4)(a) through 2.A.(4)(d) of Accomplishment Instructions of ASB TPE331–A72–2102, dated March 28, 2002, and the following:

(1) For first stage turbine disks with 4,100 cycles-since-new (CSN) or less, inspect at next access, but no later than 4,500 CSN.

(2) For first stage turbine disks with more than 4,100 CSN, inspect at next access, but within 400 cycles-in-service (CIS) after the effective date of this AD.

(3) First stage turbine disks that pass FPI must be eddy current inspected (ECI) before they are returned to service. Information on procedures for returning disks to Honeywell Engines, Systems, & Services, for ECI, can be found in ASB TPE331–A72–2102, dated March 28, 2002.

(4) First stage turbine disks, P/N 3107079–1, do not require initial inspection because they received an initial FPI and ECI at the time of conversion.

Repetitive Inspections

(g) Perform repetitive FPIs of first stage turbine disks P/N 3101520–1 and P/N 3107079–1, in accordance with 2.B.(3)(a) through 2.B.(3)(d) of Accomplishment Instructions of ASB TPE331–A72–2102, dated March 28, 2002 and the following:

(1) FPI first stage turbine disks at each scheduled hot section inspection.

(2) First stage turbine disks that pass FPI must be ECI before they are returned to service. Information on procedures for returning disks to Honeywell Engines, Systems, & Services, for ECI, can be found in ASB TPE331–A72–2102, dated March 28, 2002.

Definition

(h) For the purposes of this AD, next access is defined as when the turbine wheel assembly is removed from the engine.

Alternative Methods of Compliance (AMOCs)

(i) You must request AMOCs as specified in 14 CFR part 39.19. All AMOCs must be approved by the Manager, Los Angeles Aircraft Certification Office, FAA.

Material Incorporated by Reference

(j) The FPIs must be done in accordance with Honeywell International Inc. ASB TPE331–A72–2102, dated March 28, 2002. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 1, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–20231 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121 and 135

[Docket No. FAA–2003–14830; Special Federal Aviation Regulation (SFAR) No. 71]

RIN 2120–AH02

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to continue the existing safety requirements in Special Federal Aviation Regulation No. 71 (SFAR 71) and eliminate the termination date for SFAR 71. Currently, SFAR 71 is a final rule that will expire on October 26, 2003. Since 1994, the FAA has extended SFAR 71 for two 3-year periods. The procedural, operational, and equipment safety requirements of SFAR 71 would continue to apply to parts 91, 121, and 135 air tour operators in Hawaii. SFAR 71 does not apply to operations conducted under part 121 in airplanes with a passenger-seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds or to flights conducted in gliders or hot air balloons.

DATES: Comments must be received on or before September 8, 2003.

ADDRESSES: You may submit comments to FAA–2003–14830 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION** and Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8321, or by email at *Alberta.Brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this proposed rulemaking by submitting such data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on a proposal. Comments are specifically invited on the overall regulatory, economic, environmental and energy-related aspects of the proposal. If you are submitting comments on paper, write docket number FAA–2003–14830 on your comments and submit them in duplicate. Submit your comments to the Docket Management System or through the internet at the addresses listed above.

Anyone who would like the FAA to acknowledge receipt of their comments must submit a self-addressed, stamped, postcard containing the statement ''Comments to Docket No. FAA–2003–14830.'' The postcard will be date/time stamped and returned. All communications received on or before the specified closing date for comments will be considered before taking action on this proposed rule. Comments filed after the closing date will be considered to the extent practicable. The proposal may be changed in light of the comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. If any substantive contact with FAA personnel occurs concerning this proposal after its publication, a report summarizing that contact will be placed in the docket.

Privacy Act

Anyone is able to search the electronic form of all comments received into our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70, pages 19477–78), or you may visit *http://dms.dot.gov.*

Availability of the Proposed Rule

You can download an electronic copy of this proposed rule through the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search);*

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm;* or

(3) Accessing the **Federal Register's** Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You also can get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure you put docket number FAA–2003–14830 on your request. to identify this rulemaking.

You may review the public docket containing this proposal, any comments

received, and any final disposition, in person in the Docket Management System office (*see* address above) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entities requests for information or advice about compliance with statutes and regulations within its jurisdiction. Internet users can find additional information on SBREFA on the FAA's Web page at *http://www.2faa.gov/avr/arm/sbrefa.htm.* Persons without internet access may call the office of rulemaking at (202) 267–8677 for more information.

Background

In 1994, the FAA issued SFAR 71 as an emergency rule because of safety concerns about the risks associated with air tours in Hawaii and the increase in the accident rate (59 FR 49138, September 26, 1994). Currently, SFAR 71 imposes special safety requirements for all air tours conducted in Hawaii under parts 91, 135, and certain part 121 operations.

Section 3 specifically addresses single engine helicopters operated beyond the shore of any island. Without regard to gliding distance, the helicopter must be equipped with floats adequate to accomplish a safe emergency ditching as well as flotation gear easily accessible to each occupant. If there are no floats on the helicopter, each occupant must wear the flotation gear.

Section 4 applies to all helicopter air tours, not just single engine helicopters or off shore air tours, and requires operators to complete a performance plan before each flight. The pilot in command must comply with the performance plan.

Section 5 requires that, except for approach to, and transition from a hover, the pilot in command of a helicopter air tour operate at a combination of height and forward speed (including hover) that would permit a safe landing in the event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude.

Section 6 requires minimum altitudes for air tours in Hawaii. No person may conduct an air tour in Hawaii below an altitude of 1,500 feet above the surface or closer than 1,500 feet to any person or property. There are exceptions for altitudes necessary for takeoff and landing, compliance with air traffic control clearances, and altitudes prescribed by federal statute or regulation. Section 6 also allows operators to obtain deviation authority from the FAA to operate at lower altitudes.

Section 7 requires that each pilot in command of an air tour flight of Hawaii, with a flight segment beyond the ocean shore of any island, ensure that passengers are briefed on water ditching procedures, use of flotation equipment, and how to exit from the aircraft in the event of a water landing.

The original SFAR would have expired 3 years after becoming effective in October 1994; however, the FAA extended the termination date in both 1997 and 2000 for additional 3-year terms. (62 FR 58854, October 30, 1997; 65 FR 58610, September 29, 2000.) Except for the date extensions, SFAR 71 has continued without change to its substantive or procedural safety requirements and has remained in effect for approximately 9 years.

As discussed in the two extensions, the FAA will continue to develop a national air tour safety standards notice of proposed rulemaking. The national rulemaking will be responsive to the NTSB and others who believe that air tour safety standards should be applicable nationwide.

There have been three lawsuits regarding SFAR 71 rulemaking. The Hawaii Helicopter Operators Association (HHOA) challenged the validity of the emergency rule issued in 1994, contending that the FAA had violated the notice and comment provisions of the Administrative Procedure Act (APA). The United States Court of Appeals for the Ninth Circuit upheld the promulgation of SFAR 71 as an emergency rule finding that the FAA had properly invoked the good cause exception to section 553(c) of the APA. Also, the Court rejected HHOA's claim that the SFAR's 1,500 foot minimum altitude requirement was arbitrary and capricious. *See Hawaii Helicopter Operators Association* v. *FAA,* 51 F. 3d 212 (9th Cir. 1995).

When the FAA extended SFAR 71 in 1997 and 2000, Safari Aviation, Inc., petitioned for review of both rules in the 9th Circuit. As to the 1997 interim rule, the Court held that the challenge was moot because the rule had expired. As to the 2000 rule extending SFAR 71 without change (except for the date) the Court found that the FAA adequately responded to the comments it received. The FAA was required to respond only to significant comments raising relevant points and which, if adopted, would require a change to the proposal. The Court found that the FAA had a rational basis for promulgating SFAR 71 and held that the rule was not arbitrary or capricious. The Court also held that the FAA-approved deviations from the altitude minimums in SFAR 71 were interpretive rules not subject to the notice and comment provisions of the APA. *See Safari Aviation* v. *FAA,* 300 F. 3d 1144 (9th Cir. 2002) *cert. denied.*

The Petition for Rulemaking

In October 2002, 15 helicopter air tour operators and their pilots who operate in Hawaii petitioned to amend SFAR 71. Each of the identical petitions was signed by air tour pilots. The petitions are available in docket number FAA–2002–13959 as well as this rulemaking docket. Petitioners state that the 1,500-foot minimum altitude requirement in SFAR 71, even with FAA approved specific deviation authority, ''is cumbersome and lacks flexibility in dynamic circumstances.'' They maintain that the altitude requirement in SFAR 71 is ''unnecessarily restrictive and compromises safety by taking away pilot options.'' Petitioners state that ''pilot judgment should dictate altitude and standoff distances in accordance with well-established FAA regulatory practice and helicopter industry experience.''

Petitioners agree that the 1,500-foot minimum altitude restriction should be maintained for habitable structures and congregations of persons. For other areas, however, they request that the FAA amend the altitude restriction for helicopters to align it with federal aviation regulation section 135.203 (14 CFR 135.203). The 300-ft. altitude restriction in 14 CFR 135.203 refers to VFR helicopter operations over congested areas; however, petitioners maintain that 300 feet is a reasonable minimum altitude to apply to helicopter tour operations in noncongested areas in Hawaii. They ask the FAA to amend SFAR 71 to allow air tour helicopter operations at 300 feet except when operating over habitable structures or congregations of people.

Petitioners maintain that allowing helicopter air tours as low as 300 feet would make ''SFAR 71 safer because pilot decision-making would no longer be compromised by pressure to maintain unreasonable altitudes in certain circumstances.'' They believe that ''the pilot would then have the latitude to determine the safe and most reasonable route of flight considering terrain and weather.''

Petitioners state that SFAR 71 causes helicopter tours to fly over, or very close to, communities concentrated along the coast of the windward side of the Hawaiian Islands in order to stay at 1,500 feet and remain under the cloud

ceiling. They state that general aviation airplanes fly low in this area to stay below the helicopter tour flights. They assert that this practice is ''contrary to common sense, increases the potential for mid-air collisions, and increases noise exposure for coastal communities.'' Finally, petitioners state that a review of the pre-SFAR helicopter accidents in Hawaii would disclose that ''a 300 foot restriction would have been equally effective in preventing almost every accident attributed to low altitude.''

In an identical addendum to the petition, some petitioners state that SFAR 71 should be rescinded and that the rules governing helicopter flight and equipment should be uniform throughout the United States. These petitioners maintain that parts 91 and 135 are established safety regulations acceptable to helicopter tour pilots and tour operators on a nationwide level. They contend that SFAR 71 was imposed because of a political outcry for increased regulations. They also maintain that the accident history used to support SFAR 71 shows that if the pilots and operators had complied with existing regulations, the accidents would not have occurred or the outcomes would have been different.

The FAA's Response

The FAA has considered the petitioners' views, arguments and information in formulating this notice of proposed rulemaking. During the years that SFAR 71 has been in effect, the FAA has received many comments about the minimum altitude requirement; it continues to be a contentious issue. When the FAA issued SFAR 71 in 1994 as an emergency rule, the National Transportation Safety Board and others criticized the minimum altitude requirement because of a concern that tour operations would be concentrated at that altitude increasing the risk of mid-air collisions and derogating safety. In practice, the FAA has granted deviations to a majority of the operators, which has mitigated this concern. By granting the deviations, the FAA has provided the majority of air tour operators with specific interpretations of how the minimum altitude requirement of SFAR 71 applies to them in light of their individual safety qualifications and differences in local terrain and prevailing conditions.

The petitions and addendums to the petitions raise issues again that are similar to comments received by the agency during the three rulemaking proceedings on this SFAR. The helicopter air tour operators do not agree with the 1,500-ft. altitude minimum and they want to fly lower at 300 feet over other than congested areas in Hawaii without obtaining an FAA authorized deviation. They acknowledge, however, that a minimum altitude of 300 feet would not have prevented all the pre-SFAR accidents attributable to low altitude. SFAR 71 limits the minimum altitude at which air tours may be conducted and, to that extent, the FAA agrees with petitioners that SFAR 71 has taken away a pilot option. An altitude of 1,500 feet provides a pilot with more distance, and thus time, to avoid an accident or to deal with an error.

In summary, SFAR 71 has been successful in reducing the air tour accident rate in Hawaii and does not compromise safety. Any FAA issued deviations from the altitude requirement will continue to be site specific because the public interest in safety requires a case-by-case and site-by-site assessment for each altitude deviation request.

The Proposal

The FAA proposes to continue the safety requirements of SFAR 71 without a termination date because of the success of SFAR 71 in reducing the air tour accident rate in Hawaii and the proven effectiveness of the SFAR's requirements.

Environmental Review

In accordance with FAA Order 1050.1D, the FAA has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act. The original SFAR 71 established procedural, operational, and equipment safety requirements for air tour aircraft in the state of Hawaii. This proposal would maintain the same requirements. This rulemaking will not involve any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances.

Regulatory Evaluation Summary

This regulatory evaluation estimates the benefits and costs of a proposed rule that would continue the existing safety requirements in SFAR 71 and eliminate its termination date. Currently, SFAR 71 is a final rule that will expire on October 26, 2003. Since 1994, the FAA has extended SFAR 71 for two 3-year periods. The procedural, operational, and equipment safety requirements of SFAR 71 would continue to apply to parts 91, 135, and certain 121 air tour operators in Hawaii. SFAR 71 does not apply to operations conducted under part 121 in airplanes with a passenger-seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds or to flights conducted in gliders or hot air balloons.

The FAA estimates the total cost of this proposed rule at $29.8 million or $20.9 million, discounted. The costs reflect maintenance and operating costs attributable to flotation devices and flotation gear, operating costs required for calculating helicopter performance plans and providing passenger briefing for emergency egress in the event of a water landing. Lost opportunity costs would also be incurred due to the minimum weather provisions.

The quantified monetary benefits of the proposed rule are estimated at $125.3 million. An estimated 39 fatalities would be avoided, if the rule were 100 percent effective and the rule would have to be less than 23 percent effective for the cost per fatality avoided to exceed the benchmark value of $3.0 million.

The FAA has determined that the benefits of the proposed rule would exceed the cost. The rule would not impact on international trade because the affected operators do not compete with foreign operators. The rule would not have an unfunded mandate exceeding $100 million annually on the private sector or state, local, and tribal governments. The FAA has determined that the proposed rule would have a significant impact on a substantial number of small air tour operators.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Paperwork Reduction Act

SFAR 71 contains information collection requirements. Those same requirements apply to this extension. OMB approval (No. 2120–0620) has been extended through January 31, 2004.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the State, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Amendment

The Federal Aviation Administration proposes to amend 14 CFR parts 91, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. Add SFAR No. 71 to part 121.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

5. In parts 91, 121, and 135, SFAR NO. 71—Special Operating Rules For Air Tour Operators In The State of Hawaii, Section 8 is revised to read as follows:

SFAR NO. 71—Special Operating Rules for Air Tour Operators in the State of Hawaii

* * * * *

Section 8. *Termination date.* This SFAR NO. 71 shall remain in effect until further notice.

Issued in Washington, DC on August 4, 2003.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 03–20277 Filed 8–5–03; 4:47 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. 2003N–0324]

New Animal Drugs; Removal of Obsolete and Redundant Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing removal of regulations that exempted certain new animal drugs administered in feed from batch certification requirements. FDA is also proposing removal of regulations that required sponsors to submit data regarding the subtherapeutic use of certain antibiotic, nitrofuran, and sulfonamide drugs administered in animal feed. The intended effect of this proposed rule is to remove regulations that are obsolete or redundant. Some of the products and combination uses subject to the listings in these regulations are subject to a notice of findings of effectiveness and an opportunity for hearing published elsewhere in this issue of the **Federal Register**. One approved product subject to the regulations proposed for removal is being codified elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on the proposed rule by November 6, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e-mail: *abeaulie@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, the agency is announcing the effective conditions of use for some of the products or use combinations subject to the listings in parts 510 and 558 (21 CFR part 510 and 558), specifically, §§ 510.515 and/or 558.15, and the agency is proposing to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. One approved product subject to § 558.15 is being codified in part 558, subpart B in a final rule published elsewhere in this issue of the **Federal Register**. Concurrent with that announcement and final rule, the agency is proposing to remove these two sections of the Code of Federal Regulations (§§ 510.515 and 558.15) for the reasons described in sections II and III of this document.

II. Part 510, Subpart F Animal Use Exemptions From Certification and Labeling Requirements and § 510.515 Animal Feeds Bearing or Containing New Animal Drugs Subject to the Provisions of Section 512(n) of the Act

A. History of Part 510, Subpart F and § 510.515

In 1945, Congress added section 507 to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357) requiring the agency to provide for the certification of batches of drugs composed wholly or partly of any kind of penicillin (Public Law 79–139, 59 Stat. 463). No distinction was made

between the use of the drugs in man or other animals. Section 507 of the act was subsequently amended several times to include streptomycin, chlortetracycline, bacitracin, chloramphenicol, and their derivatives. The law allowed the agency to issue regulations exempting drugs or classes of drugs from the batch certification requirements. Over the years, FDA issued exemption regulations for a number of antibiotics used in animal feeds, provided the involved products were in compliance with certain provisions. The exemptions are currently contained in § 510.515.

The Animal Drug Amendments of 1968 consolidated provisions of the act relating to new animal drugs (including antibiotics in section 507 of the act) into new section 512 (21 U.S.C. 360b). The agency established procedural regulations under parts 510 and 514 (21 CFR part 514) to implement this provision of the act.

Subsequent to the establishment of the exemption provisions in § 510.515, the agency came to the conclusion that batch-by-batch certification was no longer required under any circumstances to assure the safety of antibiotics. In the **Federal Register** of September 7, 1982 (47 FR 39155), the agency published regulations exempting all classes of human and animal use antibiotics from batch certification requirements based upon a finding of extremely low rejection rates for the certifiable antibiotics.

In 1988, Congress removed from the act all antibiotic certification provisions for animal drugs when it enacted the Generic Animal Drug and Patent Term Restoration Act (GADPTRA). Subsequently, the agency published a final rule on May 26, 1989 (54 FR 22741), which removed all of the certifiable antibiotic procedural regulations that then appeared in parts 510 and 514. That rule indicated that removal of the technical regulations concerning specific antibiotic drugs, such as § 510.515, which contained information about their conditions of use, would be the subject of future regulations.

Since that time, FDA has removed many drug uses and use combinations from § 510.515. The agency did this when it withdrew approval of products subject to the regulation, or when it published approval regulations for them, in part 558, subpart B, after completing their Drug Efficacy Study Implementation (DESI) finalization (*see, e.g.*, 61 FR 35949, July 9, 1996). Consequently, a regulation that at one time contained dozens of batch certification exemption provisions now lists only a few products and use combinations.

B. Removal of § 510.515

The purpose of § 510.515, which was to provide exemption from batch certification of certain drugs intended for use in animal feed, was rendered obsolete with the enactment of GADPTRA. Because the regulation is out dated relative to its intended purpose, the agency is proposing to remove it.

This action is not intended to have a substantive effect on any approved new animal drugs. As noted in section II.A of this document, some of the drug uses and use combinations currently listed in § 510.515 have approvals that are codified in part 558 subpart B. Therefore, these uses will not be substantively affected by removal of listings in this regulation. Other drug use combinations currently listed in § 510.515 are also listed in § 558.15, but their approvals, if any, have not been codified in part 558 subpart B. As discussed in section II.B of this document, and in the notice appearing elsewhere in this issue of the **Federal Register**, the use combinations that have been approved will be codified in part 558 subpart B. In regard to the only other listed drug (*para*-aminobenzoic acid), the agency is unaware of any company that currently holds approval for it, or markets it, and believes it is no longer used in the practice of veterinary medicine. If a person wishes to market a drug or drug combination being removed under this proposal and believes that it holds a valid approval for it that is not already codified in part 558 subpart B or subject to the final rule or notice published elsewhere in this issue of the **Federal Register**, the person should present evidence supporting approval to avoid facing potential regulatory action in the event of future marketing.

III. Section 558.15 Antibiotic, Nitrofuran, and Sulfonamide Drugs in the Feed of Animals

A. History of § 558.15

In the mid-1960s, FDA became concerned about the safety to man and animals of long-term antibiotic use in animals, and for several years the agency studied the effects of low-level feeding of antibiotics to animals. In April 1970, the Commissioner of Food and Drugs (Commissioner) established a task force of scientists from government, industry, and academia to comprehensively review the use of antibiotics in animal feed. In the **Federal Register** of February 1, 1972 (37 FR 2444), the agency published the conclusions of that task force and proposed to require sponsors to submit specific data for antibacterial drugs intended for subtherapeutic or growth promotion use. The task force identified areas in which data were needed and established criteria for studies intended to show whether use of antimicrobials in animal feed presents a hazard to human or animal health. The criteria reflected four basic issues with respect to which data were needed: (1) The potential to increase the frequency of bacteria carrying transferable drug resistance; (2) the potential to increase the antibiotic resistance of, or the shedding of, *Salmonella* spp.; (3) the potential to enhance bacterial pathogenicity; and (4) the potential for drug residues to cause an increase in pathogenic bacteria resistant to human antibiotics drugs or to cause human hypersensitivity reactions. The 1972 proposal also stated that all then-approved subtherapeutic and/or growth promoting uses in animal feeds of antibiotics and sulfonamides that are also used in humans would be revoked unless data identified by the task force were submitted to FDA.

In the **Federal Register** of April 20, 1973 (38 FR 9811), the agency published the final rule which established 21 CFR 135.109 *Antibiotic and sulfonamide drugs in the feed of animals* (redesignated as § 558.15 in 1974). The section was subsequently amended on September 5, 1973, to include the nitrofurans (38 FR 23942). In the **Federal Register** of February 25, 1976 (41 FR 8282), the agency withdrew approvals for those antimicrobial drugs not in compliance with the data submission requirements of § 558.15. The same document added paragraphs (g)(1) and (g)(2) to § 558.15. These paragraphs listed the medicated premixes and drug combinations, respectively, which had submitted the required data for agency review. These are known as the interim marketing provisions.

B. Approval Status of Products and Use Combinations Subject to the Listings in § 558.15

The preamble to the final rule that added the § 558.15 interim marketing provisions stated that all products and combination uses subject to the listings in the regulation were the subject of approved applications (41 FR 8282 and 8285, February 25, 1976). However, a number of years after this regulation was issued, it became apparent that the administrative record associated with 15 products was incomplete, calling into question their approval status.

One cause of this problem relates to the Animal Drug Amendments of 1968. Under Section 108 of this law, any product that had been approved before 1968 by a new drug application, food additive petition, certifiable antibiotic application, or master file would be considered to be the subject of an approved new animal drug application under the new section 512. Because § 558.15 dealt with antimicrobials used in animal feed, the products listed in § 558.15 were considered food additives before the 1968 animal drug amendments. In addition, a number of them contained certifiable antibiotics. The approval processes for these products before the 1968 amendments were complex, redundant, and involved the acceptance of secondary manufacturers/distributors, sometimes based on a demonstration of equivalence of their products to primary sponsor products and sometimes not. Unlike the current new animal drug application process under section 512 of the act, this was generally not an orderly process. As a result, the agency's and sponsors' ability to document the pre-1968 approvals has been hampered.

Because their administrative records were incomplete, in 1998 the agency undertook to determine whether any of the 15 products were unapproved and, therefore, erroneously listed in § 558.15. In this regard, the agency asked sponsors to identify the involved product, attach associated labeling, and certify its approval status. Certification was forthcoming for 10 of the 15 applications. The agency informed the involved parties by letter that their certifications would be used as part of the administrative record of approval and that it planned to codify these approvals as soon as possible, very likely in concert with the removal of § 558.15. Because the agency was unable to verify that the remaining five products were approved, the agency believes they were erroneously listed in § 558.15.

C. Reasons for Removal of § 558.15

The agency is proposing to remove § 558.15 because it long ago fulfilled its stated purpose of requiring sponsors to submit data regarding the subtherapeutic use of antibiotics on the market at the time of its publication. The safety studies required to be conducted on the products listed at the time the section was issued were completed long ago. In addition, as discussed in section III.D of this document, the agency has a new strategy and concept for assessing the safety of antimicrobial new animal drugs, including subtherapeutic use of antimicrobials in animal feed, with regard to their microbiological effects on bacteria of human health concern. Therefore, the removal of § 558.15 does not mean that studies will no longer be required to assess the consequences of the use of antimicrobials in food-producing animals.

D. The Antibiotic Resistance Issue After Publication of § 558.15

While, at the time of its publication, § 558.15 accurately reflected FDA's basis for assessing the safety of subtherapeutic uses of antibiotics in feed, based on new information and considerable experience, over time FDA developed a new strategy and concept to deal with the issue of antimicrobial resistance. Accordingly, it is useful to review the history of the antimicrobial resistance issue from the time § 558.15 was issued to the present relative to the significance of the removal of § 558.15 on FDA's ability to deal with the issue.

As discussed in section III.A of this document, under § 558.15, FDA received data addressing the subtherapeutic use of antibiotics in animal feed. To assist FDA in assessing the data, the Commissioner asked the agency's National Advisory Food and Drug Committee (NAFDC) to review the data and issues involved and to make recommendations to him on the future use of subtherapeutic antibiotics in animal feeds.

In 1977, the NAFDC made its findings known to FDA. The FDA carefully considered the recommendations made by the NAFDC. On August 30, 1977 (42 FR 43770), the Director of the Center for Veterinary Medicine (Director) proposed to revoke all regulations providing for the subtherapeutic use of penicillin alone and in combination with other drugs in animal feeds. Because the National Academy of Sciences National Research Council (NAS/NRC) DESI review concluded that no therapeutic uses of penicillin in animal feed were supported by adequate evidence of effectiveness, he also proposed to revoke all regulations providing for the therapeutic use of penicillin in animal feed. Also, in the **Federal Register** of August 30, 1977 (42 FR 43772), the Director issued a notice of opportunity for hearing (NOOH) on a proposal to withdraw approval of NADAs for all penicillin-containing premixes intended for use in animal feeds. The NOOH was issued, under section 512(e) of the act (21 U.S.C. 360b(e)), on the grounds that evidence showed that such products have not been shown to be safe, that the applicants failed to establish and maintain records and make reports as required, and that there was a lack of substantial evidence that such products were effective for certain uses.

Subsequently, in the **Federal Register** of October 21, 1977 (42 FR 56254), the Director proposed to revoke regulations providing for the subtherapeutic use of tetracyclines in animal feed except for those specific conditions of use for which there were no safe and effective substitutes at that time. Also in the **Federal Register** of October 21, 1977 (42 FR 56264), the Director issued an NOOH on a proposal to withdraw approval of NADAs for certain subtherapeutic uses of tetracyclines (chlortetracycline and oxytetracycline) in animal feeds.

In 1978, after FDA proposed to withdraw approval of various uses of penicillin and tetracyclines in animal feeds, Congress directed FDA to conduct further studies related to the use of antibiotics in animal feed and to hold in abeyance implementation of its proposed withdrawal actions pending the outcome of the studies (*see* H.R. Rept. 95–1290 at p. 99 (June 13, 1978)). As directed, FDA spent $1.5 million of its appropriations for a study of the safety issues relating to the use of antibiotics in animal feeds. The study entitled ''The Effects on Human Health of Subtherapeutic Use of Antimicrobials in Animal Feeds,'' conducted by the NAS/NRC, was published in 1980 (Ref. 1). It concluded that existing data could neither prove nor disprove the postulated hazards to human health from subtherapeutic antimicrobial use in animal feeds.

On November 20, 1984, the Natural Resources Defense Council, Inc. (NRDC), petitioned the Secretary of Health and Human Services (Secretary) to immediately suspend approval of the subtherapeutic use of penicillin and tetracyclines in animal feeds (Ref. 2). NRDC's petition requested that the Secretary invoke the imminent hazard provision of the act (21 U.S.C. 360b(e)(1)) which authorizes the Secretary to suspend approval of an application for the use of a new animal drug if an imminent hazard exists to the health of man or to the animals for which the drug is intended. Soon after the filing of the petition, there was a congressional hearing in December 1984 before the House of Representatives Committee on Science and Technology, Subcommittee on Investigations and Oversight, as well as an informal hearing before the Commissioner of FDA on January 25, 1985.

On November 13, 1985, the Secretary denied the NRDC petition on the basis that an ''imminent hazard'' had not been demonstrated (Ref. 3). This decision was based on an analysis of the evidence cited by the NRDC as well as scientific

evidence, information, and opinions coming out of the January 25, 1985, public hearing and other relevant data collected and analyzed by FDA.

Subsequently, the Commissioner directed the agency to contract with the NAS, Institute of Medicine (IOM), to conduct a risk assessment of the potential risk to human health associated with the practice of feeding subtherapeutic levels of penicillin and the tetracyclines to animals for growth promotion, feed efficiency, and disease prevention.

In 1988, the NAS/IOM reviewed the information concerning the antibiotic resistance issue available at the time. An expert committee was convened to determine the human health risks associated with the practice of feeding subtherapeutic levels of penicillin and tetracyclines to animals for growth promotion, feed efficiency, and disease prevention. In the report entitled ''Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed'' the committee developed a risk-analysis model, using data only on *Salmonella* infections that resulted in human death (Ref. 4). The committee found a considerable amount of indirect evidence implicating both subtherapeutic and therapeutic use of antimicrobials as a potential human health hazard. The committee did not find data demonstrating that use of subtherapeutic penicillin or tetracycline directly caused humans to die from salmonellosis. The committee noted that it was not possible to separate the public health effects of therapeutic and subtherapeutic uses and strongly recommended further study of the issue.

Based upon the report and other relevant information, the agency: (1) Concluded that the risks were neither proved nor disproved, (2) did not deny there was some degree of risk, and (3) did not conclude that the continued subtherapeutic use of penicillin and the tetracycylines in animal feed is safe. The notices of opportunity for hearing published in the **Federal Registers** of August 30 and October 21, 1977, remain pending.

The American Society of Microbiology issued a report in 1995 that cited grave concerns about both human and animal antibiotic use and the rise in antimicrobial resistance (Ref. 5). The report advocated: A significant increase in resistance monitoring in the United States, more education about the use and risks of antimicrobials, and more basic research designed to develop new antimicrobials and vaccines and disease prevention measures. The report criticized overuse of antibacterials in human medicine, but also pointed out the extensive use of antibacterials in food production, which was partly attributed to the consolidation of farms to facilities with large numbers of confined animals. The report made it clear that the antibiotic resistance problem is global and was a precursor to involvement by the United Nation's World Health Organization (WHO). The meetings of the WHO in 1997 and 1998 led to the development of a number of recommendations regarding the use of antimicrobial drugs in food-producing animals (Refs. 6 and 7).

In 1999, FDA issued ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (#78) (64 FR 70715, Dec. 17, 1999). In this guidance, FDA reaffirmed its statutory authority to evaluate the safety of new animal drugs with respect to their microbiological effects on bacteria of human health concern. FDA asserted that this consideration applies to all antimicrobial new animal drugs intended for use in food-producing animals including both therapeutic use and use at subtherapeutic levels for production purposes. Subsequently, the agency released a concept paper, which has come to be known as the Framework Document, which described a possible approach that the FDA could take in regulating antimicrobial new animal drugs intended for use in food-producing animals (Ref. 8).

Since the publication of the Framework Document, FDA has held a number of public meetings as well as two meetings of its Veterinary Medical Advisory Committee to obtain input on the concepts outlined in the Framework Document. Based on this input, FDA drafted a guidance for industry (GFI) to implement several of the key strategies and concepts discussed in the Framework Document. The draft guidance for industry entitled ''Draft Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' (#152) (67 FR 58058, Sept. 13, 2002) outlines a risk analysis process for evaluating the safety of antimicrobial new animal drugs. This guidance, subject to public comment, represents the Center for Veterinary Medicine's current best thinking on how to assure the safety of antimicrobial new animal drugs intended for use in food-producing animals.

E. Effect of the Removal of § 558.15

Based on the previous discussion, the removal of § 558.15 will have no effect on FDA's ability to address the issue of antimicrobial resistance. Additionally, the removal of § 558.15 is not intended to have a substantive effect on the products subject to the section's interim marketing provisions. Most of the products or use combinations subject to the listings have approvals that are already codified in part 558 subpart B. The agency's actions on the products and use combinations whose approval is not already codified in part 558 subpart B are described elsewhere in this issue of the **Federal Register**. One action consists of publishing the agency's findings of effectiveness for these products and use combinations, under DESI, and, where relevant, proposing to withdraw approval of applications for indications lacking substantial evidence of effectiveness and providing a notice of opportunity for hearing. The other action is the codifying of one approval in part 558 subpart B. This action is a final rule since the product is not subject to DESI. As noted in section III.B of this document, the agency believes that five products subject to the listings in § 558.15 were erroneously listed there. Because the regulation could only permit the interim marketing of approved products, the removal of § 558.15 will not have a substantive effect on the five unapproved products. Further, the agency is unaware of any company that currently markets any of these five products. If a company wishes to market one of these drug products and believes that it holds a valid approval for it that is not already subject to an approval reflected in part 558 subpart B, the company should present evidence supporting approval to avoid facing potential regulatory action in the event of future marketing.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory

alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

FDA is proposing to revoke §§ 510.515 and 558.15 because they are obsolete. The purpose of § 510.515 was to provide exemption from certification and labeling requirements of certain drugs used in animal feeds. FDA has discontinued the practice of certifying antibiotic animal drugs, thereby rendering the regulation obsolete relative to its intended purpose. The original purpose of § 558.15, requiring the submission of the results of studies on the effects of long-term administration of then-marketed antimicrobial drugs in animal feed on the occurrence of multiple drug-resistant bacteria associated with these animals, is also obsolete as FDA has a new strategy and concept for assessing the safety of antimicrobial new animal drugs, including subtherapeutic use of antimicrobials in animal feed, with regard to their microbiological effects on bacteria of human health concern.

Almost all of the drug product listings contained in §§ 510.515 and/or 558.15 are already reflected in approval regulations published elsewhere in part 558 subpart B. In two documents published in this issue of the **Federal Register**, the agency is addressing the drug product listings whose approvals are not currently reflected in the approval regulations in part 558 subpart B.

A. Benefits

This proposal is expected to provide clarity and equity in the regulations for new animal drugs for use in animal feeds by deleting the obsolete provisions at §§ 510.515 and 558.15. We do not expect this proposed rule to result in a direct human or animal health benefit. Rather, this proposal would remove unnecessary regulations that both provided exemptions for certifications that no longer occur, or required the submission of safety data for approved subtherapeutic uses of antibiotics, nitrofurans and sulfonamides in the 1970s.

B. Compliance Costs

FDA expects this proposal to result in the loss of marketing ability for five combination uses listed in § 558.15 as described in III.B of this document. In an attempt to certify the approval status, FDA contacted, or attempted to contact, the three sponsors of these five drug combinations. Attempts with one sponsor indicated that they did not wish to certify the transitional approvals, and no response was received from the other sponsors concerning these transitional approvals. Accordingly, we believe that these products were erroneously listed in § 558.15 and that these sponsors no longer market these combination uses as provided for under § 558.15. The revocation of § 558.15 is not expected to have a substantive effect on any approved new animal drugs, or to cause any approved new animal drug to lose its marketing ability. Therefore, we do not expect any loss of sales to result from this provision. We request public comment on the loss of sales or other effects to any products or drug combinations that will lose marketing ability due to this proposed rule.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. FDA has determined in section V.B of this document that this proposed rule would not impose compliance costs on the sponsors of any products that are currently marketed. Further, it is not expected to cause any drugs that are currently marketed to lose their marketing ability. We therefore certify that the proposed rule would not have a significant economic effect on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

D. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Academy of Sciences/National Research Council, ''The Effects on Human Health of Subtherapeutic Use of Antimicrobials in Animal Feeds,'' 1980.

2. Petition of the Natural Resources Defense Council, Inc., to Secretary of Health and Human Services, New York, NY, November 20, 1984.

3. Decision of the Secretary Denying Petition, Docket No. 84P–0399, November 13, 1985.

4. National Academy of Sciences/Institute of Medicine, ''Human Health Risks With the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed,'' 1989.

5. Report of the American Society for Microbiology Task Force on Antibiotic Resistance; the American Society for Microbiology, Public and Scientific Affairs Board; Washington, DC, March 16, 1995.

6. World Health Organization (WHO), ''The Medical Impact of the Use of Antimicrobials in Food Animals,'' Report of a WHO meeting, WHO/EMC/ZOO/97.4, Berlin, Germany, October 13 to 17, 1997.

7. WHO, ''Use of Quinolones in Food Animals and Potential Impact on Human Health,'' Report of a WHO meeting, WHO/EMC/ZDI/98.12, Geneva, Switzerland, June 2 to 5, 1998.

8. Discussion paper: ''A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals,'' Center for Veterinary Medicine, Food and Drug Administration, 1999; Docket 98D–1146 (*http://www.fda.gov/cvm/antimicrobial/ar__framework.htm*).

VIII. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division

of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 510 and 558 be amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

Subpart F [Removed and Reserved]

2. Subpart F, consisting of § 510.515, is removed and reserved.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

4. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (c) by removing ''and in §§ 510.515 and 558.15 of this chapter''.

§ 558.15 [Removed]

5. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is removed.

Dated: August 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20244 Filed 8–5–03; 4:09 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–127]

RIN 1625–AA11

Regulated Navigation Areas; Charleston Harbor, Cooper River, South Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to create regulated navigation areas for waters in the Charleston Harbor under the Highway 17 bridges and in the Cooper River under the Don Holt I–526 bridge. These regulated navigation areas are needed for national security reasons to help ensure public safety and prevent sabotage or terrorist acts aimed at these bridges that cross the main shipping channel and link the city and port of Charleston with the mainland. Vessels would be prohibited from anchoring, mooring, or loitering within these areas, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 7, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401. Coast Guard Marine Safety Office Charleston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kevin D. Floyd, Coast Guard Marine Safety Office Charleston, at (843) 720–3272.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–127], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the Coast Guard Marine Safety Office Charleston at the address under **ADDRESSES** explaining why a meeting would be beneficial. If we determine that a public meeting will aid this rulemaking, a meeting will be held at a time and place announced by separate notice in the **Federal Register**.

Background and Purpose

Based on the continuing threat of terrorism against the United States, and in light of the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that terrorist action that would adversely affect the Port of Charleston could be initiated against bridges over the regulated navigation areas by persons on vessels or otherwise in close proximity to these bridges. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These regulated navigation areas would help to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, South Carolina, and ensure continued unrestricted access to the sea from the Port.

Discussion of Proposed Rule

The proposed rule would establish regulated navigation areas for the waters in the Charleston Harbor under the Highway 17 bridges and in the Cooper River under the Don Holt I–526 bridge. These regulated navigation areas are needed for national security reasons to promote public safety and help to prevent sabotage or terrorist acts against bridges in these ports. Vessels would be prohibited from anchoring, mooring, or loitering within these areas, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the

Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary, because these zones encompass only a small segment of the waterway, and vessels are allowed to transit through these zones. This proposed rule would simply prohibit vessels from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule would have a significant economic effect on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule encompasses very limited geographic areas encompassed by the regulated navigation areas and does not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Additionally, persons may request permission from the Coast Guard Captain of the Port of Charleston to deviate from these regulations.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would affect it economically.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its proposed effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Kevin D. Floyd, Marine Safety Office Charleston, at (843) 720–3272.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

1. Add § 165.715 to read as follows:

§ 165. 715 Regulated Navigation Areas; Charleston Harbor, Cooper River, S.C.

(a) *Location*—(1) *Highway 17 bridges.* A regulated navigation area is established for the waters around the Highway 17 bridges, to encompass all waters of the Cooper River within a line connecting the following points: 32° 48.23′N, 079° 55.3′W; 32° 48.1′N, 079° 54.35′W; 32° 48.34′N, 079° 55.25′W; 32° 48.2′N, 079° 54.35′W, then back to the point of origin.

(2) *Interstate 526 bridge (Don Holt bridge).* Another fixed regulated navigation area is established for the waters around the Interstate 526 bridge spans (Don Holt bridge) in Charleston Harbor and on the Cooper River encompassing all waters within a line connecting the following points: 32° 53.49′N, 079° 58.05′W; 32° 53.42′N, 079° 57.48′W; 32° 53.53′N, 079° 58.05′W; 32° 53.47′N, 079° 57.47′W, then back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, vessels are allowed to transit through these regulated navigation areas but are prohibited from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

(2) All vessel operators shall comply with the instructions of the Captain of the Port or designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

Dated: July 29, 2003.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 03–20196 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 259–0368; FRL–7542–2]

Revisions to the California State Implementation Plan, Yolo Solano, Bay Area, and Mojave Desert Air Quality Management Districts and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Yolo Solano (YSAQMD), Bay Area (BAAQMD), and Mojave Desert (MDAQMD) Air Quality Management Districts' and to the Monterey Bay Unified (MBUAPCD) Air Pollution Control District's portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing action on local rules that regulate these emission sources. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 8, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616–4882.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940–6536.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule title	Adopted	Submitted
YSAQMD	2.14	Architectural Coatings	11/14/01	01/22/02
BAAQMD	8–3	Architectural Coatings	11/21/01	06/18/02
MDAQMD	1113	Architectural Coatings	02/24/03	04/01/03
MBUAPCD	426	Architectural Coatings	04/17/02	06/18/02

On February 27 and July 23, 2002 and May 13, 2003, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of YSAQMD Rule 2.14, BAAQMD Rule 8–3, and MBUAPCD Rule 426 into the SIP on July 1, 1982, February 18, 1998, and March 24, 2000, respectively. We approved versions of Rule 1113 on June 9, 1982 and January 24, 1985 for various portions of California before those portions were unified as the MDAQMD on July 1, 1993. The YSAQMD, BAAQMD, MDAQMD, and MBUAPCD adopted revisions to the SIP-approved

versions of these rules on November 14, 2001, November 21, 2001, February 24, 2003, and April 17, 2002, respectively. CARB submitted the YSAQMD rule revision to us on January 22, 2002, the BAAQMD and MBUAPCD rule revisions on June 18, 2002, and the MDAQMD revision on April 1, 2003. The YSAQMD rule revision submitted on January 22, 2002 contained errors and omissions and a correct version of the rule was forwarded to us on January 21, 2003.

C. What Is the Purpose of the Submitted Rule Revisions?

The rule revisions primarily modify the rules for consistency with the Suggested Control Measure for Architectural Coatings (SCM). The SCM is a model rule developed by CARB which seeks to provide statewide consistency for the regulation of architectural coatings. The recommended VOC content limits and other provisions of the SCM are the results of an extensive investigation of architectural coatings which included a statewide survey of architectural coatings sold in California and several technology assessments. CARB adopted the SCM on June 22, 2000. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) in moderate to extreme nonattainment areas for VOC sources covered by a Control Technique Guideline (CTG) and for major sources in nonattainment areas (*see* section 182(a)(2)(A)), must not relax requirements adopted before the 1990 CAA amendments in nonattainment areas (section 193), and must not interfere with attainment, reasonable further progress or other applicable requirements of the CAA (section 110(1)). The YSAQMD and BAAQMD regulate ozone nonattainment areas (*see* 40 CFR part 81), however, because these rules, including MDAQMD and MBUAPCD's, regulate sources that are not covered by a CTG and that are nonmajor area sources, they are not subject to CAA RACT requirements.

Guidance and policy documents that we used to help evaluate these revised rules to ensure enforceability and compliance with other CAA requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. National Volatile Organic Compound Emission Standards for Architectural Coatings, September 11, 1998 (40 CFR part 59, Subpart D).

5. ''Suggested Control Measure for Architectural Coatings,'' CARB, June 22, 2000.

6. ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, EPA, January 2001 (the EIP).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying labeling and reporting provisions. They are largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Provisions of the rules which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rules' Deficiencies?

These rules were all based on the same model—the SCM—and, as a result, contain many of the same rule deficiencies. The deficiencies relate to the averaging provisions incorporated into these rules. While we believe the VOC limits contained in these rules to be feasible and substantiated by a significant investigation of architectural coatings, the averaging provisions provide a valuable alternative compliance mechanism for the VOC limits contained in these rules and may reduce the overall economic impact of compliance with the VOC limits on manufacturers. We have identified five specific problems with these provisions. The first four could be addressed through relatively minor changes to the averaging provisions which we have described below. The fifth could also be addressed by relatively minor changes or by clarification of the State's authority. The following provisions common to YSAQMD Rule 2.14, BAAQMD Rule 8–3, MDAQMD Rule 1113, and MBUAPCD Rule 426 conflict with section 110 of the Act and prevent full approval of the SIP revisions.

1. The rules allow for the sell-through of coatings included in approved averaging programs. Because emissions from coatings sold under the sell-through provision cannot be distinguished based on the information explicitly required to be maintained under the rule from emissions from coatings sold under an averaging program, the enforceability of the rules may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions. One way to correct this is to clarify that manufacturers with an approved averaging program cannot also use the sell-through provision.

2. The provisions of the averaging compliance option that require manufacturers to describe the records being used to calculate emissions are not specific enough to verify compliance with the rules and represent executive officer discretion. More specificity as to the types of suitable records is needed to verify compliance with the averaging compliance option.

3. The rules' language regarding how violations of the averaging compliance option shall be determined is ambiguous. The language should be clarified to specify that ''an exceedance for each coating that is over the limit shall constitute a separate violation for each day of the compliance period.''

4. The rules allow manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis. The rules should clarify whether emissions from averaging programs will be calculated using statewide or district-specific data.

5. The rules grant the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues which could create enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

D. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized,

this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions for the BAAQMD and YSAQMD will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rules' deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). MDAQMD and MBUAPCD do not regulate nonattainment areas, so the sanction and FIP implications do not apply. Note that the submitted rules have been adopted by the districts and EPA's final limited disapproval would not prevent the local agencies from enforcing them.

All of the identified deficiencies are associated with the averaging programs in these rules which sunset on January 1, 2005. If we finalize this notice as proposed, the effective date of our action will be after July 1, 2003 and would trigger CAA § 179 sanction clocks that expire 18 and 24 months later. However, we believe that sunsetting the averaging programs effectively corrects all the deficiencies associated with averaging, and revisions to these rules is not needed to avoid associated sanctions.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days. EPA proposed a similar limited approval and limited disapproval for three other California architectural coating rules on September 20, 2002 (67 FR 59229). While the seven California rules are very similar, we divided them into two proposed actions for internal administrative and workload management reasons. While we received significant negative public comment on the September 20, 2002 proposal, we have not finalized the September 20, 2002 proposal and today's proposal should not be construed as responsive to comments received on the previous proposal. We intend to act on the seven rules consistently, so any comments submitted on the September 20, 2002 proposal will be considered before finalizing action on today's proposal.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agencies' VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101– 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and title I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not ''economically significant'' under Executive Order 12866.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–20306 Filed 8–7–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2346; MB Docket No. 03–168, RM–10747; MB Docket No. 03–169, RM–10748]

Radio Broadcasting Services; Crowell, TX and Florien, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 293C3 at Crowell, Texas, as the community's first local aural transmission service. Channel 293C3 can be allotted to Crowell in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.6 miles) west to avoid a short-spacing to the application site of Station KBZS, Channel 292C2, Wichita, Texas. The reference coordinates for Channel 293C3 at Crowell are 34–01–11 North Latitude and 99–49–53 West Longitude. The Audio Division also requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 242A at Florien, Louisiana, as the community's first local aural transmission service. Channel 242A can be allotted to Florien in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 242A at Florien are 31–26–37 North Latitude and 93–27–26 West Longitude.

DATES: Comments must be filed on or before September 15, 2003, and reply comments on or before September 30, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–168 and 03–169, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW.,

Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Florien, Channel 242A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Crowell, Channel 293C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20207 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2430; MB Docket No. 03–176; RM–10720]

Radio Broadcasting Services; Harrison, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Commercial Radio of Harrison requesting the allotment of Channel 280A at Harrison, Michigan. The coordinates for Channel 280A at Harrison are 43–53–33 and 84–49–06. There is a site restriction 14.1 kilometers (8.7 miles) south of the community. Since Harrison is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 280A at Harrison.

DATES: Comments must be filed on or before September 15, 2003, and reply comments on or before September 30, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Robert J. Buenzle, Law Offices of Robert J. Buenzle, 11710 Plaza America Drive, Suite 2000, Reston, Virginia 20190.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–176, adopted July 23, 2003, and released July 25, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 280A at Harrison.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20210 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2431; MB Docket No. 03–175; RM–10719]

Radio Broadcasting Services; Rising Star, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 290C3 at Rising Star, Texas. The coordinates for Channel 290C3 at Rising Star are 32–05–54 and 98–58–00.

DATES: Comments must be filed on or before September 15, 2003, and reply comments on or before September 30, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–175, adopted July 23, 2003, and released July 25, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's

Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Rising Star, Channel 290C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20211 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2429; MB Docket No. 03–177, RM–10749; MB Docket No. 03–178, RM–10750; MB Docket No. 03–179, RM–10752; MB Docket No. 03–180, RM–10753]

Radio Broadcasting Services; Anacoco, LA; Erie, PA; Greenfield, CA; and Quitaque, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments to Anacoco, Louisiana; Erie, Pennsylvania; Greenfield, California; and Quitaque, Texas. The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 276C3 at Anacoco, Louisiana as the community's first local aural transmission service. Channel 276C3 can be allotted to Anacoco in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) northwest to avoid a short-spacing to the licensed site of Station, KAJN–FM, Channel 275C, Crowley, Louisiana. The coordinates for Channel 276C3 at Crowley are 31–19–32 North Latitude and 3–26–48 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before September 15, 2003, and reply comments on or before September 30, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205, Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405, and Daniel R. Feely, 682 Palisade Street, Pasadena, California 91103.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–177; MB Docket No. 03–178; MB Docket No. 03–179; and MB Docket No. 03–180, adopted July 23, 2003, and released July 25, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Quatex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Audio Division requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 240A at Erie, Pennsylvania as the community's fifth local FM transmission service. Channel 240A can be allotted to Erie in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) northeast to avoid a short-spacing to the licensed site of Station WAKZ(FM), Channel 240A, Sharpsville, Pennsylvania. The coordinates for Channel 240A at Erie are 42–09–54 North Latitude and 79–59–24 West Longitude. Canadian concurrence as a specially-negotiated short-spaced allotment has been requested since Erie is located within 320 kilometers (200 miles) of the U.S.-Canadian border, and the allotment is short-spaced to Station CFPL–FM, Channel 240C1, London, Ontario.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 261C3 at Quitaque, Texas, as the community's first local aural transmission service. Channel 261C3 can be allotted to Quitaque in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.1 kilometers (11.3 miles) north to avoid short-spacings to the licensed sites of Station KOMX(FM), Channel 262C2, Pampa, Texas; Station KMMX(FM), Channel 262C1, Tahoka, Texas; and to the proposed allotment site for Channel 263C3, Estelline, Texas.

The Audio Division requests comments on a petition filed by Daniel R. Feely proposing the allotment of Channel 254A at Greenfield, California, as the community's third local aural transmission service. Channel 254A can be allotted to Greenfield in compliance with the Commission's minimum distance separation requirements with city reference coordinates. The coordinates for Channel 254A at Greenfield are 36–19–23 North Latitude and 121–14–41 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 254A at Greenfield.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Anacoco, Channel 276C3.

4. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 240A at Erie.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Quitaque, Channel 261C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Divison, Media Bureau.

[FR Doc. 03–20212 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2432, MB Docket No. 03–174, RM–10754]

Radio Broadcasting Services; Ehrenberg, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Daniel R. Feely proposing the allotment of Channel 286C2 at Ehrenberg, Arizona, as the community's first local aural transmission service. The coordinates for Channel 286C2 at Ehrenberg, Arizona are 33–48–00 NL and 114–19–12 WL. There is a site restriction 28.8 kilometers (17.9 miles) northeast to avoid short-spacing to the license sites of Station KBUX, Channel 232A, Quartzsite, Arizona and Mexican Station XHMC–FM, Channel 285B, Mexicali, BN. Since Ehrenberg is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

DATES: Comments must be filed on or before September 15, 2003, and reply comments on or before September 30, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Daniel R. Feely, 682 Palisade Street, Pasadena, California 91103.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–174, adopted July 23, 2003, and released July 25, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Ehrenberg, Channel 286C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–20213 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 153
Friday, August 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–050–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of international standard-setting activities of the Office International des Epizooties, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–050–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–050–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–050–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Director, Trade Support Team, International Services, APHIS, room 1132, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–7677. For specific information regarding standard-setting activities of the Office International des Epizooties, contact Dr. Michael David, Chief, Sanitary International Standards Team, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093. For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Mr. Narcy Klag, Program Director, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8469, e-mail: *narcy.g.klag@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law by the President on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

- ''International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the Office International des Epizooties (OIE) regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities and USDA's Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities

for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards.

Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT.**

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 164 member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The WTO has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve this through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of member countries for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to member countries.

Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to member countries for consultation (review and comment). Draft standards are revised accordingly and then presented to the OIE General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 23–28, 2004, in Paris, France. The Deputy Administrator for APHIS' Veterinary Services is the official U.S. delegate to the OIE. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about current and past OIE draft Code chapters may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/oie/* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Code Commission Name Changes

The name of the International Animal Health Code Commission has been changed to the Terrestrial Animal Health Standards Commission. However, it will continue to be referred to as the ''Code Commission.''

The name of the Fish Diseases Commission has been changed to the Aquatic Animal Health Standards Commission, and will be referred to as the Aquatic Animals Commission. The Aquatic Animals Commission will continue to develop and revise chapters that address issues such as the health certification, diagnosis and surveillance of animal species.

OIE Code Chapters Up for Adoption

Existing Code chapters that may be revised and new chapters that may be drafted in preparation for the next General Session in 2004 include the following:

1. Avian Influenza

This chapter was recently redrafted to include the H5 and H7 low pathogenic strains. Although many countries supported the chapter, significant changes still need to be made before the new chapter can be adopted.

2. Bluetongue

This is a vector-borne disease that primarily affects sheep. Draft surveillance guidelines for bluetongue will be drafted by an ad hoc group and presented to the delegates for comment.

3. Maedi-visna

This is a disease of sheep and goats. This would represent a new OIE Code chapter. The chapter will provide recommendations for the trade of sheep and goats and their products as it pertains to Maedi-visna. A draft chapter may be presented for comment.

4. Diseases of Bees

An ad hoc group was convened in June 2003 to address the many comments and to draft a revised chapter to be submitted for adoption in 2004.

5. Bovine Spongiform Encephalopathy (BSE)

This chapter is continuously being updated as new and additional information becomes available. For the next General Session, the International Committee agreed to open up the chapter for review with the intent of considering changing the categories under which countries are placed with respect to BSE.

6. Animal Welfare

At least two ad hoc groups will be convened before the end of 2003 to draft chapters establishing international standards for the transportation of livestock.

Code Commission Future Work Program

During the next few years, the OIE Code Commission is expected to address the following issues or establish ad hoc groups of experts to update and/or develop standards for the following issues:

1. BSE in Small Ruminants

This would be a new OIE Code chapter intended to provide guidance for export certification of sheep and

goats and their products. The United States will consider its position on this new standard after it reviews a draft.

2. Animal Welfare

Various chapters on animal welfare, including transportation, humane slaughter, and housing, will be drafted by ad hoc groups and presented to the International Committee for comment.

The Process

These chapters are drafted (or revised) by either the Commission or by ad hoc groups composed of technical experts nominated by the Director General of the OIE by virtue of their subject-area expertise. Once a new chapter is drafted or an existing one revised, the chapter is distributed to member countries for review and comment. The OIE attempts to provide proposed chapters by early September to allow member countries sufficient time for comment. Comments are due by mid-November of the same year. The draft standard is revised by the OIE Code Commission on the basis of relevant scientific comments received from member countries.

The United States (*i.e.*, USDA/APHIS) intends to review and, where appropriate, comment on all draft chapters and revisions once it receives them from the OIE. USDA/APHIS intends to distribute these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment. Additional information regarding these draft standards may be obtained by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the pertinent OIE Code Commission will revise that standard accordingly and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each member country is obligated to review, comment, and make decisions regarding the adoption of standards strictly on their scientific merits.

Other OIE Topics

Every year at the General Session, two technical items are presented. For the May 2004 General Session, the following technical items will be presented:

1. Emerging and reemerging viral diseases and ways to predict, prevent, and control outbreaks (with particular reference to hemorrhagic fevers, avian influenza, and rabies).

2. Animal identification and traceability.

The information in this notice includes all the information available to us on OIE standards currently under development or consideration. Information on OIE standards is available on the Internet at *http://www.oie.int*. Further, a formal agenda for the next General Session will be available to member countries in February 2004, and copies will be available to the public once the agenda is published. For the most current information on meeting times, working groups, and/or meeting agendas, including information on official U.S. participation in OIE activities, and U.S. positions on standards being considered, contact Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any areas of work under the OIE may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. Michael David.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is placed under the authority of the FAO, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force once two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment. At this date, 44 of the required 80 member countries have deposited their official letters of acceptance. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the revised IPPC are described below.

Step 1

Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in the form of a discussion paper accompanied by a topic or draft standard. Drafts can be submitted by individual countries, but are more commonly submitted by regional plant protection organizations (RPPOs). Alternately, the Secretariat can propose a new standard or amendments to existing standards.

Step 2

A summary of proposals is submitted by the Secretariat to the ICPM. The ICPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the ICPM.

Step 3

Specifications for the standards identified as priorities by the ICPM are drafted by the Secretariat. The draft specifications are submitted to the Standards Committee for approval/amendment and are subsequently made available to members and RPPOs for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4

The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5

Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPOs for consultation (120 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6

Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the ICPM for adoption.

Step 7

The ISPM is established through formal adoption by the ICPM according to Rule X of the Rules of Procedure of the ICPM.

Step 8

Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the ICPM.

Each member country is represented on the ICPM by a single delegate. Although experts and advisers may accompany the delegate to meetings of the ICPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the ICPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the APHIS Internet at *http://www.aphis.usda.gov/ppq/pim/standards/*. Interested individuals may review the standards posted on this Web site and submit comments via the Web site.

The next ICPM meeting is scheduled for March 29–April 2, 2004, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ programs is the U.S. delegate to the ICPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. The provisional agenda for the meeting is as follows:

Provisional Agenda for the Fifth Interim Commission on Phytosanitary Measures

1. Opening of the session.
2. Adoption of the agenda.
3. Report by the chairperson.
4. Report by the Secretariat.
5. Adoption of international standards (see section below entitled ''IPPC Standards Up for Adoption in 2004'' for details).
6. Items arising from the Fourth Session of the ICPM (see section below entitled ''New Standard Setting Initiatives'' for details).
7. Work program for harmonization.
8. Status of the 1997 revised IPPC.
9. Other business.
10. Date and venue of the next meeting.
11. Adoption of the report.

IPPC Standards Up for Adoption in 2004

It is expected that the following standards will be sufficiently developed to be considered by the ICPM for adoption at its April 2004 meeting. The United States, represented by APHIS' Deputy Administrator for PPQ, will participate in the consideration of these standards. The U.S. position on each of these issues will be developed prior to the ICPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders. The standards that are most likely to be considered for adoption include:

1. Pest Risk Analysis for Regulated Non-Quarantine Pests

Certain pests that are not quarantine pests may be subject to phytosanitary regulations and procedures because their presence above a specific level results in economically unacceptable impacts associated with the intended use of the plants. Such pests are referred to as regulated non-quarantine pests (RNQP). Under the IPPC, phytosanitary regulations and procedures covering RNQP should be technically justified. The classification of a pest as an RNQP and any restrictions placed on the importation of the plant species with which it is associated must be justified by pest risk analysis. This standard will provide guidance for (1) Conducting an appropriate pest risk assessment necessary to demonstrate that a particular plant for planting is a pathway that may result in an economically unacceptable impact and (2) subsequent risk management decisions. This draft standard was posted on APHIS' Web site on June 20, 2003, with comments due by September 15, 2003. Subsequently, this draft will be prepared for ICPM approval at its 6th session in April 2004. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

2. Pest Risk Analysis for Living Modified Organisms (LMOs)

At the third session of the ICPM in April 2001, members agreed that phytosanitary risks that may be associated with an LMO, or any organism with novel traits, fall within the scope of the IPPC and should be considered using pest risk analysis to facilitate decisions regarding pest risk management. Accordingly, members subsequently agreed on the need to develop an IPPC standard that provides guidance to National Plant Protection Organizations (NPPOs) on the assessment of LMOs regarding pest risk. This draft standard, which provides guidance on the conduct of pest risk analysis for LMOs was posted on APHIS' Web site on June 20, 2003, with comments due by September 15, 2003. Subsequently, this draft will be prepared for ICPM approval at its 6th session in April 2004. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

3. Guidelines for an Import Regulatory System

The primary objective of an import regulatory system is to prevent the entry of regulated pests with imported commodities. In operating an import regulatory system, the NPPO has

functions that include administration, regulatory development, pest risk analysis and pest listing, compliance checks, action taken on non-compliance, emergency action, authorization of personnel, and other such functions described in the Convention. This standard describes the structure and operation of a phytosanitary import regulatory system and the rights, obligations, and responsibilities that should be considered in establishing, operating, and revising such a system. This draft standard was posted on APHIS' Web site on June 20, 2003, with comments due by September 15, 2003. Subsequently, this draft will be prepared for ICPM approval at its 6th session in April 2004. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2003 and 2004 on the topics listed below. These standard-setting initiatives are not expected to be completed prior to April 2004 and, therefore, will not be ready for adoption at the 2004 ICPM session. Nonetheless, APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Efficacy of Phytosanitary Measures

This standard will provide guidance for evaluating the efficacy of phytosanitary measures. This will be significant guidance as the IPPC begins to develop recommendations on acceptable phytosanitary measures for managing specific pests. A range of supplemental and specific standards could follow (*e.g.*, hot water treatment for fruit flies). Work on this standard will continue through 2004 with the goal of having the standard ready for ICPM approval in 2005.

2. Equivalence

This standard will provide guidance to NPPOs for evaluating and making judgments of equivalence in the phytosanitary arena. The expert working group is expected to develop a standard that describes the fundamental principles and concepts involved in making an equivalence determination; identifies approaches that are most useful for phytosanitary purposes; and outlines the sequence of steps that would be involved in evaluating equivalence, including the information that may be required to be exchanged during this process.

3. Low pest prevalence

This standard is likely to provide guidance for establishing, maintaining, and verifying areas of low pest prevalence (*i.e.*, ''An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control, or eradication measures * * *'' (IPPC, 1997). Benefits of establishing and recognizing a low pest area may include reduced use of non-toxic control measures in the field (*e.g.*, sterile insect technique); market access for areas that were previously excluded; and less restrictive movement control. The standard is likely to describe measures for maintaining specified pest populations at low levels, monitoring the pest, quarantine operations, and emergency planning and response. It would describe the role of the NPPO to ensure compliance with this standard.

4. Revision of ISPM No. 2 (Guidelines of Pest Risk Analysis, General Standards)

This standard was adopted in 1995 and is considered a foundation standard describing the basic framework for conducting a pest risk analysis. Since then, new standards have been adopted such as specific standards on pest risk analysis for quarantine pests versus pest risk analysis requirements for regulated non-quarantine pests. As a result, ICPM members agreed on the need to review, update, and make consistent the original concept standard with these more contemporary standards.

5. Guidelines for Surveillance for Specific Pests (Citrus Canker)

This standard provides guidelines to plant health officials for obtaining information on pests of concern in specific sites in an area over a defined period of time through specific surveys. The collected information may be used to determine the presence or distribution of pests in an area, or on a host or commodity.

6. Inspection Methodology

This standard addresses pest detection aspects of post-harvest compliance procedures based on inspection when used for the importation or exportation of plants, plant products, and other regulated articles for purposes of determining phytosanitary actions for individual consignments. Many of the same principles and procedures apply to systems that rely upon closely related activities such as testing as the means for detecting pests and determining phytosanitary measures.

7. Update ISPM No. 1 (Principles of Plant Quarantine)

This reference standard describes the general rule and specific principles of plant quarantine as related to international trade. A number of principles and terms contained in the current edition (adopted in 1993) need to be updated and aligned with the WTO SPS Agreement, 1997 revised Convention, and recently adopted IPPC standards.

For more detailed information on the above topics, which will be addressed by various working groups established by the ICPM, contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts draft standards on the Internet (*http://www.aphis.usda.gov/ppq/pim/standards/*) as they become available and provides information on when comments on standards are due. Additional information on IPPC standards is available on the FAO's Web site at *http://www.ippc.int/IPP/En/default.htm.* For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Mr. Klag.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade.

NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise

related to the policy or standard being considered.

Proposals drawn up by the individual panels are circulated for review to government and industry officials in Canada, Mexico, and the United States, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various Government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/;* interested persons may submit comments via that Web site. Once revisions are made, the proposal is sent to the NAPPO working group and the NAPPO standards panel for technical reviews and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 20–24, 2003, in New Orleans, LA. The NAPPO Executive Committee meeting will take place on October 19, 2003, and a special session will be held on October 20, 2003, to solicit comment from industry groups so that suggestions can be incorporated into the NAPPO work plan for the 2004 NAPPO year. The Deputy Administrator for APHIS' PPQ programs is a member of the NAPPO Executive Committee. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

The work plan for 2003 was established after the October 2002 Annual Meeting in Oaxaca, Mexico. The Deputy Administrator for PPQ participated in establishing this NAPPO work plan (see panel assignments below).

Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. The United States (*i.e.*, USDA/APHIS) intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel (Inspector Accreditation)

This panel will work towards facilitating the proper implementation of the standard ''Accreditation of Individuals to Sign Federal Phytosanitary Certificates.'' A review of the U.S. system was conducted in June 2001, and a review of the Canadian system was conducted in early 2002. A review of Mexico's system was conducted in June 2003. A written report was to be provided to the Executive Committee at its meeting in July 2003.

2. Biological Control Panel

This panel will work on developing a standard for biological control facilities.

3. Biotechnology Panel

This panel will continue to develop a NAPPO standard for the review of products of biotechnology that focuses on the assessment of the potential to present a plant pest risk. Modules on the importation into contained facilities and confined release into the environment have been completed. It is anticipated that the module dealing with unconfined release into the environment will be completed in 2003. A draft for the final module, importation for uses other than propagation, will also be developed.

4. Citrus Panel

The panel will continue to work on the standard for the entry of citrus propagative material into NAPPO member countries and will include consideration of mites and insects.

5. Forestry Panel

The panel will work on trying to harmonize, between NAPPO countries, the implementation of the international standard for wood packaging material.

6. Fruit Panel

The panel will finalize the standard, ''Areas of Low Pest Prevalence.'' This standard should be approved by the NAPPO Executive Committee in 2003.

7. Fruit Tree Panel

The panel will begin development of a standard on ''Guidelines for the Importation of Fruit Trees.'' This panel will also continue to develop a concept paper on ''The Movement of Propagative Material, which may lead to the development of a standard at a future date.''

8. Grapevine Panel

This panel will expand the current version of the NAPPO grapevine standard to include other significant pests such as nematodes and insects.

9. In Transit Panel

The panel will begin development of a NAPPO standard that outlines the phytosanitary procedures to be followed for regulated articles that pass through a ''third'' country on their way to the destination country.

10. Pest Risk Analysis Panel

This panel will coordinate NAPPO input on the development of the IPPC standard entitled ''Pest Risk Analysis for Regulated Non-Quarantine Pests.''

11. Phytosanitary Alert System

This panel will finalize the NAPPO standard on pest reporting. The standard should be approved by the Executive Committee this year.

12. Potato Panel

This panel will review and revise the NAPPO Potato Standard pest list and finalize a revised standard for NAPPO Executive Committee approval.

13. Standards Panel

This panel is responsible for the following: Providing updates on standards for the NAPPO newsletter; coordinating the review of new and amended NAPPO standards and ensuring that comments received during the country consultation phase are incorporated as appropriate; organizing conference calls and preparing NAPPO discussion documents for possible use at the IPPC; and promoting implementation of recently adopted IPPC standards. The panel will finalize a NAPPO standard for implementing the recently adopted IPPC standard ''Notification of Interceptions and Non-Compliance,'' and will finalize a standard for developing bilateral workplans.

The PPQ Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice includes all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, check the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S.

participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Mr. Klag. Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Mr. Klag.

Done in Washington, DC, this 5th day of August, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–20247 Filed 8–7–03; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 7, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: CD Cases, Slim, 7045–00–NIB–0179, 7045–00–NIB–0180.

NPA: Wiscraft Inc.—Wisconsin Enterprises for The Blind, Milwaukee, Wisconsin.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Full Spectrum Battle Equipment (FSBE), 8415–00–NSH–0691—Basic Shooter's Kit A, 8415–00–NSH–0692—Platoon Kit A, 8415–00–NSH–0768—Platoon Kit B, 8415–00–NSH–0769—Basic Shooter's Kit B, 8415–00–NSH–0770—Platoon Kit C, 8415–00–NSH–0771—Basic Shooter's Kit C.

NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York.

Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Lighted Baton, 6260–00–NIB–0005—Amber, 6260–00–NIB–0006—InfraRed, 6260–00–NIB–0008—Red, 6260–00–NIB–0009—Green, 6260–00–NIB–0010—Blue, 6260–00–NIB–0011—Two Toned (Amber/Red).

NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Markers, Liquid Impression, 7520–00–NIB–1677—Set/Medium Point (Black, Blue, Red, Green), 7520–00–NIB–1678—Medium Point (Black), 7520–00–NIB–1679—Medium Point (Red), 7520–00–NIB–1680—Medium Point (Blue), 7520–00–NIB–1681—Set/Extra Fine Tip (Black, Blue, Red, Green), 7520–00–NIB–1682—Extra Fine Tip (Black), 7520–00–NIB–1683—Extra Fine Tip (Red),7520–00–NIB–1684—Extra Fine Tip (Blue).

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Markers, Permanent Impression, 7520–00–NIB–1667—Fine Tip (Black), 7520–00–NIB–1668—Fine Tip (Red), 7520–00–NIB–1669—Fine Tip (Blue), 7520–00–NIB–1670—Fine Tip (Green), 7520–00–NIB–1671—Set/Fine Tip (Black, Blue, Red, Green), 7520–00–NIB–1672—Ultra Fine Tip (Black), 7520–00–NIB–1673—Ultra Fine Tip (Red), 7520–00–NIB–1674—Ultra Fine Tip (Blue), 7520–00–NIB–1675—Ultra Fine Tip (Green), 7520–00—NIB–1676—Set/Ultra Fine Tip (Black, Blue, Red, Green).

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Professional LYSOL Brand II Aerosol Disinfectant Spray, 6840–00–NIB–0039—Original Scent, 6840–00–NIB–0040—Fresh Scent, 6840–00–NIB–0041—Country Scent, 6840–00–NIB–0042—Crisp Linen Scent, 6840–00–NIB–0043—Sprint Waterfall, 6840–00–NIB–0044—Plus Fabric Refresher.

NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Skilcraft Toner Cartridge, 7510–00–NIB–0633 (New—compatible with HP Part No. 92298A), 7510–00–NIB–0641 (New—compatible with HP Part No. C3903A), 7510–00–NIB–0642 (New—compatible with HP Part No. C3906A), 7510–00–NIB–0644 (New—compatible with HP Part No. C4092A).

NPA: Alabama Industries for the Blind, Talladega, Alabama.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Service

Service Type/Location: Janitorial/Grounds Maintenance, INS Florence Processing Center, Florence, Arizona.

NPA: J.P. Industries, Inc., Tucson, Arizona.

Contract Activity: DOJ/INS–CA, INS Western Regional Office, Laguna Niguel, California.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–20267 Filed 8–7–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: September 7, 2003.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 16, May 30, June 6, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 26567, 32458, 33908) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Antibacterial Wipe Shipper, M.R. 90403.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Product/NSN: Markers, Dry Erase, Chisel Tip, Set of 8, 7520–00-NIB–0661.

NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Tape Refill w/ American Flag on the core, 7520–00-NIB–1579.

NPA: The Lighthouse f/t Blind in New Orleans, New Orleans, Louisiana.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Service

Service Type/Location: Receiving, Shipping, Handling & Custodial Service, Brunswick Naval Air Station, Topsham, Maine.

NPA: Pathways, Inc., Auburn, Maine.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Deletions

On June 13, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 35380) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

(End of Certification)

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Cleaning Compound/ 7930–01–373–8846.

Product/NSN: Cleaning Compound/ 7930–01–373–8847.

Product/NSN: Cleaning Compound/ 7930–01–373–8850.

Product/NSN: Cleaning Compound/ 7930–01–398–0943.

Product/NSN: Cleaning Compound/ 7930–01–398–0946.

Product/NSN: Detergent, General Purpose/7930–00–515–2477.

Product/NSN: Detergent, General Purpose/7930–00–526–2919.

Product/NSN: Detergent, General Purpose/7930–00–526–2920.

Product/NSN: Detergent, General Purpose/7930–00–527–1207.

Product/NSN: Detergent, General Purpose/7930–00–527–1237.

Product/NSN: Detergent, General Purpose/7930–00–530–8067.

Product/NSN: Detergent, General Purpose/7930–00–985–6945.

Product/NSN: Detergent, General Purpose/7930–00–985–6946.

Product/NSN: Detergent, Laundry/ 7930–01–045–3515.

Product/NSN: Detergent, Laundry/ 7930–01–045–3517.

NPA: Lighthouse for the Blind, St. Louis, Missouri.

Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–20268 Filed 8–7–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072503C]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public sscoping meetings for an environmental assessment (EA) and workshops on individual fishing quotas (IFQ); request for comments.

SUMMARY: NMFS announces public scoping meetings to determine issues for an EA for possible new management measures for vermillion snapper under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) in accordance with the National Environmental Policy Act (NEPA) of 1969. The Gulf of Mexico Fishery Management Council (Council) will convene these scoping meetings to solicit public ideas to reduce overfishing in the Gulf of Mexico vermilion snapper fishery. Immediately following each scoping meeting on vermilion snapper, the Council will hold a workshop on individual fishing quota (IFQ) systems to acquaint the public with IFQ systems prior to a fall referendum on an IFQ system for the Gulf red snapper fishery.

DATES: The meetings and workshops will be held in August. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Public comments on the scoping document for vermilion snapper should be received in the Council office by 5 p.m., eastern daylight time, September 5, 2003, to ensure consideration by the Council.

ADDRESSES: Written comments on and requests for the scoping document on vermilion snapper should be addressed to the Council at the following address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619; telephone: (813) 228–2815.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: NMFS announces public scoping meetings to solicit public and interested agencies input on the nature and extent of issues and impacts to be addressed in the EA and the methods by which they will be evaluated. The Council will hold these scoping meetings to solicit public ideas to reduce overfishing in the Gulf of Mexico vermilion snapper fishery. Copies of the scoping document will be available at the meetings and are available prior to the meetings from the Council office (see **ADDRESSES**).

Vermilion and red snapper in the Gulf of Mexico are managed under the FMP. The results of several scientific analyses indicate that the vermilion snapper resource is undergoing overfishing and that, therefore, the fishing mortality rate (F) on the stock may need to be reduced up to 30–50 percent. Some possible management actions to reduce F include bag limits for the recreational fishery, trip limits for the commercial fishery, and size limits for both fisheries. In addition, specific values (or a range of values) for maximum sustainable yield (MSY), optimum yield (OY), the minimum stock size threshold (MSST) (below which a stock is considered to be overfished), and the maximum fishing mortality threshold (MFMT) (above which a stock is considered to be undergoing overfishing) need to be determined for vermilion snapper.

Immediately following each scoping meeting on vermilion snapper, the Council will hold a workshop on IFQ systems to acquaint the public with the provisions of IFQ systems in other areas of the country. Copies of the workshop PowerPoint presentation will be available at each workshop. NMFS intends to hold a referendum in late September through November for eligible commercial red snapper fishers to determine whether they support an IFQ system for their fishery. The purpose of the workshops is to inform these fishers on how current IFQ systems work and to answer their questions before they vote in the referendum.

Scoping Meetings and Workshops

The vermilion snapper scoping meetings followed immediately by the IFQ workshops will be held at the following locations and dates from 7 p.m. until 10 p.m. (or earlier if the meetings and workshops are concluded).

1. Monday, August 18, 2003, Hilton Beachfront Garden Inn, 23092 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone 251–974–1600;

2. Tuesday, August 19, 2003, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; telephone 850–234–6541;

3. Wednesday, August 20, 2003, Tampa Airport Hilton, 2225 Lois Avenue, Tampa, FL 33607; telephone 813–877–6688;

4. Monday, August 25, 2003, Port Aransas Community Center, 408 North Allister, Port Aransas, TX 78373; telephone 361–749–4111;

5. Tuesday, August 26, 2003, San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX 77551; telephone 409–744–1500;

6. Wednesday, August 27, 2003, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone 504–469–5000; and

7. Thursday, August 28, 2003, Palace Casino Resort, 158 Howard Avenue, Biloxi, MS 39530; telephone 800–725–2239.

Public comments on the scoping document for vermilion snapper will be considered by the Council if received in the Council office by 5 p.m., eastern daylight time, September 5, 2003.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 11, 2003.

Dated: August 4, 2003.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–20288 Filed 8–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072503A]

Marine Mammals; File No. 881–1668

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), Seward, Alaska 99664 (Principal Investigator: Don Calkins) has been issued a permit amendment to take Steller sea lions (*Eumetopias jubatus*) for the purposes of scientific research.

ADDRESSES: The permit amendment and related documents are available for review upon written request, by downloading from the internet, or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301)713–2289, or the Division's Web page at *http://www.nmfs.noaa.gov/*

prot__res/PR1/Permits/pr1permits__review.html.

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668,(907)586–7221.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 27, 2002 , notice was published in the **Federal Register** (67 FR 43283) that a request for a scientific research permit to take Steller sea lions had been submitted by the above-named organization. The requested permit was issued on November 11, 2002 (67 FR 69724) under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). However, a decision regarding the proposed transport of juvenile sea lions to the ASLC for temporary maintenance and associated experiments was deferred pending additional environmental analyses. A supplemental environmental assessment on the effects of these activities was prepared, resulting in a Finding of No Significant Impact.

Permit No. 881–1668, issued to the Alaska SeaLife Center, authorizes takes of threatened and endangered Steller sea lions of all ages in Alaska by capture, hot-branding, flipper tagging, collection of blood and tissue samples from, attachment of external scientific instruments, mortality incidental to research, and harassment incidental to these activities and remote monitoring. In addition to these activities, the amended permit authorizes transport of up to 16 juvenile Steller sea lions per year to the ASLC for short-term captivity, health assessments (including anesthesia, blood sampling, blubber biopsy, diagnostic x-ray, endoscopy, bioelectric impedance analysis, deuterated water, and urinalysis), controlled fasting, and adrenocorticotrophic hormone challenge experiments.

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 31, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–20287 Filed 8–7–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2002). Also see 67 FR 63891, published on October 16, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 8, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239pt. [2], 300/301, 313–315, 317/326, 331pt. [3], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [4], 359–V [5], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [6], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [7], 659–H [8], 659–S [9], 666pt. [10], 845 and 846, as a group.	1,181,007,809 square meters equivalent.
Sublevels in Group I	
200	887,271 kilograms.
218	12,787,895 square meters.
219	2,855,462 square meters.
226	12,965,879 square meters.
237	2,429,788 dozen.
300/301	2,571,798 kilograms.
313	48,061.550 square meters.

Category	Twelve-month limit [1]
314	58,393,405 square meters.
317/326	25,936,777 square meters of which not more than 4,825,713 square meters shall be in Category 326.
331pt.	2,346,855 dozen pairs.
333	119,176 dozen.
334	366,260 dozen.
335	407,609 dozen.
336	203,773 dozen.
338/339	2,453,923 dozen of which not more than 1,874,202 dozen shall be in Categories 338–S/339–S [11].
340	837,649 dozen of which not more than 431,022 dozen shall be in Category 340–Z [12].
341	734,369 dozen of which not more than 448,173 dozen shall be in Category 341–Y [13].
342	293,511 dozen.
345	136,732 dozen.
347/348	2,415,698 dozen.
351	672,013 dozen.
352	1,754,073 dozen.
359–C	735,237 kilograms.
359–V	1,024,435 kilograms.
360	9,427,398 numbers of which not more than 6,430,396 numbers shall be in Category 360–P [14].
361	4,975,193 numbers.
362	8,151,131 numbers.
363	23,789,817 numbers.
410	1,097,989 square meters of which not more than 880,157 square meters shall be in Category 410–A [15] and not more than 880,157 square meters shall be in Category 410–B [16].
433	22,401 dozen.
434	14,323 dozen.
435	26,306 dozen.
436	16,207 dozen.
438	28,362 dozen.
440	40,517 dozen of which not more than 23,153 dozen shall be in Category 440–M [17].
442	42,890 dozen.
443	136,016 numbers.
444	227,409 numbers.
445/446	295,169 dozen.
447	75,617 dozen.
448	23,933 dozen.
611	6,378,852 square meters.
613	9,026,069 square meters.
614	14,171,245 square meters.
615	29,528,139 square meters.
617	20,631,013 square meters.
631pt.	345,976 dozen pairs.
633	66,578 dozen.
634	724,322 dozen.
635	764,035 dozen.
636	603,882 dozen.
638/639	2,621,421 dozen.
640	1,448,923 dozen.
641	1,371,033 dozen.
642	394,604 dozen.
643	581,757 numbers.
644	3,755,822 numbers.
645/646	874,314 dozen.
647	1,726,382 dozen.
648	1,208,550 dozen.
651	894,215 dozen of which not more than 158,194 dozen shall be in Category 651–B [18].
652	3,361,307 dozen.
659–C	475,698 kilograms.
659–H	3,335,465 kilograms.
659–S	734,750 kilograms.
666pt.	543,402 kilograms.
846	196,845 dozen.
Group II	
332, 359–O [19], 459pt. [20] and 659–O [21], as a group	43,414,411 square meters equivalent.
Group III	
201, 220, 224–V [22], 224–O [23], 225, 227, 369–O [24], 400, 414, 469pt. [25], 603, 604–O [26], 618–620 and 624–629, as a group.	51,912,449 square meters equivalent.

Category	Twelve-month limit [1]
Sublevels in Group III	
224–V	4,296,201 square meters.
225	7,552,943 square meters.
Group IV	421,249 square meters equivalent.
852	
Levels not in a Group	
369–S [27]	631,871 kilograms.
863–S [28]	9,039,399 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[20] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[25] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–20276 Filed 8–7–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

August 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 26575, published on May 16, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on May 1, 2003 and extends through December 31, 2003.

Effective on August 8, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	112,000 kilograms.
301	480,533 kilograms.
332	106,667 dozen pairs.
333	25,440 dozen.
334/335	504,000 dozen.
338/339	9,960,000 dozen.
340/640	1,413,333 dozen.
341/641	538,973 dozen.
342/642	414,163 dozen.
345	212,000 dozen.
347/348	5,241,000 dozen.
351/651	359,893 dozen.
352/652	1,307,333 dozen.
359–C/659–C [2]	242,667 kilograms.
359-S/659-S [3]	371,000 kilograms.
434	12,096 dozen.
435	28,267 dozen.
440	1,767 dozen.
447	36,747 dozen.
448	22,613 dozen.
620	2,997,227 square meters.
632	153,333 dozen pairs.
638/639	949,013 dozen.
645/646	141,333 dozen.
647/648	1,394,478 dozen.

[1] The limits have not been adjusted to account for any imports exported after April 30, 2002.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–20275 Filed 8–7–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Protective Glove and Method For Making Same

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,596,345 B2 entitled ''Protective Glove and Method for Making Same'' issued July 22, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, phone (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–20263 Filed 8–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability, Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Announcement of DEIS Availability, King Cove Access Project, and Notice of Public Hearings.

SUMMARY: The King Cove Health and Safety Act (Section 353) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277) provided the Aleutians East Borough (AEB) with $20 million to construct a year-round marine-road transportation system between the Cities of King Cove and Cold Bay, Alaska, on the Alaska Peninsula. AEB proposes a 152-acre project consisting of a 17.2-mile access road, two hovercraft ramps, and terminals located on the Northeast Corner of Cold Bay and Cross Wind Cove, on the west side of Cold Bay, and a hovercraft. The Corps of Engineers, Alaska District, has evaluated the AEB's permit application under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Air Act. The EIS describes five alternatives that satisfy the purpose and needs for the proposed project. The alternatives are: (1) Northeast Corner Cold Bay—Hovercraft; (3) Lenard Harbor—Hovercraft; (4) Lenard Harbor—Ferry; (5) Lenard Harbor—Helicopter; and (6) the Isthmus Road alternative. Alternative 2 is the No-Action Alternative. Alternative 6 is included for comparison purposes only and cannot be selected for authorization by the decision-maker. Alternatives 1, 3, 4, and 5 would be constructed primarily on King Cove Corporation surface lands. Alternative 1 requires a USFWS compatibility determination on Native corporation owned lands within the Izembek National Wildlife Refuge, and no construction or operations would occur within the Congressionally designated Wilderness Area. Currently, Alternatives 3 and 4 are designated as the Environmentally Preferable Alternatives. The Corps of Engineers will use the EIS, public review process and consideration of comments received as a basis for the permit decision.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers, Alaska District, is the lead Federal agency with the U.S. Fish and Wildlife Service (USFWS) as a cooperating agency for this DEIS. During the Scoping process (February 16 to June 22, 2001) over 12,331 comments were received, with over 12,000 comments and opinions provided by e-mail. Many of these scoping comments expressed an objection to a road through the Izembek National Wildlife Refuge Wilderness Area. Twenty-eight alternatives were preliminarily considered during the scoping and the alternative development phase of the EIS process. Six alternatives were selected for further evaluation. The proposed action (Alternative 1, Northeast Corner Cold Bay / Hovercraft) and two alternatives (Alternative 3, Lenard Harbor / Hovercraft; and Alternative 4, Lenard Harbor / Ferry) were selected for detailed evaluation that incorporates a marine-road link design in compliance with Section 353 cited above. The required ''no action'' alternative is presented as Alternative 2. The two remaining alternatives are not in compliance with section 353; hence, the $20 million Federal appropriations would not be available for project construction. These are an air-road link alternative (Alternative 5, Lenard Harbor / Helicopter) and an all-road alternative (Alternative 6, Isthmus Road). The all-road alternative (Alternative 6) is not a practicable alternative for evaluation under the Section 404(b)(1) Guidelines (40 CFR 230) for the Clean Water Act and cannot be authorized by the District Engineer. If an application is received by the USFWS under Title XI of ANCSA, a separate EIS would be required, with approval required by the Secretary of Interior, The President, and Congress. No significant adverse impacts were identified for Alternatives 1, 3, 4, and 5. Significant beneficial impacts were noted for each action alternative centering on human and social resources with the ability to enhance safe, reliable, and efficient emergency medical transport for King Cove residents and seasonal workers. For Alternatives 1, 3, 4, and 5 with the incorporation and implementation of mitigation measure, impacts to threatened and endangered or listed species (Steller's eider, Steller sea lion, and Northern sea otter) were preliminarily determined not likely to adversely affect these species. For the same alternatives and incorporation of mitigation measures, determinations of ''would not likely impact Essential Fish Habitat'', and Habitats of Particular Concern were concluded.

Public Workshops and Public Hearings: August 25, 2003, Cold Bay, Alaska, Community Building. Public Workshop: 7 p.m. to 8 p.m. Public Hearing: 8 p.m. to 9 p.m

August 26, 2003; King Cove, Alaska, Community Center. Public Workshop: 4 p.m. to 5 p.m. Public Hearing: 7 p.m. to 9 p.m.

September 9, 2003; Anchorage, Alaska University of Alaska, Commons Room 107, 3700 Sharon Gagnon Lane. Public Workshop: 4 p.m. to 5 p.m. Public Hearing: 7 p.m. to 9 p.m

Comment Period: Comments should be received by the Corps of Engineers, Alaska District (address above) by September 23, 2003, or 45 days from the publication date within the **Federal Register**, whichever is later.

David S. Hobbie,

Assistant Branch Chief, Regulatory Branch, Alaska District.

[FR Doc. 03–20226 Filed 8–7–03; 8:45 am]

BILLING CODE 3710–NL–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Raritan and Sandy Hook Bay, Combined Erosion and Storm Damage Reduction Project, Borough of Highlands, Monmouth County, NJ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS) to ascertain compliance with and to lead to the production of a National Environmental Policy Act (NEPA) document in accordance with the President's Council of Environmental Quality (CEQ) rules and regulations, as defined and amended in 40 CFR parts 1500–1508, Corps' principals and guidelines as defined in Engineering Regulation (ER) 200–2–2, ER 1105–2–100, and other applicable Federal and State environmental laws for the proposed erosion control and storm reduction efforts in the Borough of Highlands in Monmouth County, NJ.

The Borough of Highlands is located in the northeastern section of Monmouth County and is bounded on the north by Sandy Hook Bay and on the east by the Shrewsbury River. The project study area consists of approximately ⅓ of a square mile of densely developed marine, commercial, and residential buildings at the eastern terminus, and extends westward approximately 11,000 feet, bounded by Sandy Hook Bay to the south and NJ State Route 36 to the north.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Ruben, Environmental Analyst, Planning Division, Environmental Analysis Branch, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090, at 212–264–0206 or at *howard.ruben@usace.army.mil.* Written

comments are to be provided to Mr. Ruben.

SUPPLEMENTARY INFORMATION:

1. The Combined Erosion Control and Storm Damage Prevention Pre-Feasibility Study for the Raritan Bay and Sandy Hook Bay, NJ, including the Borough of Highlands, was authorized by a resolution of the Committee on Public Works and Transportation of the U.S. House of Representatives adopted August 1, 1990, which states the following: ''Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, that, the Board of Engineers for Rivers and Harbors is requested to review the report of the Chief of Engineers on Raritan Bay and Sandy Hook Bay, New Jersey, published as House Document No. 464, Eighty-seventh Congress, Second Session, and other pertinent reports, to determine the advisability of modifications to the recommendations contained therein to provide erosion control and storm damage prevention for the Raritan Bay and Sandy Hook Bay.'' The Water Resources Development Act of 1966 reauthorized the project, including uncompleted construction.

2. The previously authorized Federal project for Raritan Bay and Sandy Hook Bay, NJ, was authorized by the Flood Control Act of October 12, 1962, in accordance with House Document No. 464, Eighty-seventh Congress, Second Session. While this project resulted in construction of shore protection improvements within certain municipalities, improvements in Highlands were not considered economically feasible and therefore not recommended. It was noted in the 1962 study that Highlands is subject to severe damage from tidal flooding and that the problem would be further considered for development of an economically feasible plan. The area of Highlands was again addressed in the Raritan Bay and Sandy Hook Bay, New Jersey, Combined Flood Control and Shore Protection Reconnaissance Study Report, dated March 1993. This reconnaissance report covered municipalities extending westward from Highlands to South Amboy with concentration on Port Monmouth for which a specific plan of improvement was identified. Report findings concluded that, within the study area, shoreline protection and flood control projects in Highlands and five other communities appeared to be economically viable and were recommended to go forward with further studies. This was determined indirectly through means of a planning evaluation matrix that compared Port Monmouth criteria to damage mechanism and potential damage reduction benefits.

3. Two types of environmental analyses will be conducted; impacts associated with structural storm damage reduction improvements and analyses required for mitigation planning purposes.

4. Public scoping meetings are expected to be scheduled in September 2003. The meetings will be held in Monmouth County at locations not yet determined. Public notices identifying the location, date, and time for the meetings will be announced in local area newspapers. Results from the public scoping meetings with the District and Federal, State, and local agency coordination will be addressed in the scoping document. Parties interested in receiving notices of public scoping meetings or copies of the scoping document should contact Mr. Ruben at the above address.

5. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel John B. O'Dowd, District Engineer, at the above address.

6. Estimated Date of DEIS Availability: February 2005.

Leonard Houston,

Chief, Environmental Analysis Branch.

[FR Doc. 03–20265 Filed 8–7–03; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Raritan Bay and Sandy Hook Bay, Combined Erosion Control and Storm Damage Reduction Study, Borough of Keyport, Monmouth County, NJ: Feasibility Phase

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS), in compliance with the National Environmental Policy Act (NEPA), which will lead to a NEPA document in accordance with Council on Environmental Quality (CEQ) regulations, as defined and amended in 40 CFR parts 1500–1508 (promulgated pursuant to NEPA), Corps' principles and guidelines as defined in Engineering Regulations (ER) 1105–2–100, Planning Guidance Notebook, and ER 200–2–2, Procedures for Implementing NEPA, and other applicable Federal and State environmental laws for the proposed storm damage reduction project in the Borough of Keyport, Monmouth County, NJ.

The study area consists of low-lying areas along the Raritan Bay shoreline between and including Luppatatong Creek to the west and Chingarora Creek to the east in the Borough of Keyport, Monmouth County, NJ. Bay area flooding primarily occurs in the low-lying commercial areas located in the central and northwestern portions of the Borough and in residential areas to the northeast. Flooding also occurs in areas adjacent to Luppatatong and Chingarora Creeks.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Pinzon, Project Biologist, Planning Division, Environmental Analysis Branch, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY, 10278–0090, (212) 264–2199, or *Ronald.R.Pinzon@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. This study is authorized by a resolution of the Committee on Public Works and Transportation of the U.S. House of Representatives dated August 1, 1990, reading: ''Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, that, the Board of Engineers for Rivers and Harbors is requested to review the report of the Chief of Engineers on Raritan Bay and Sandy Hook Bay, New Jersey, published as House Document No. 464, Eighty-seventh Congress, Second Session, and other pertinent reports, to determine the advisability of modifications to the recommendations contained therein to provide erosion control and storm damage prevention for the Raritan Bay and Sandy Hook Bay.''

2. A public scoping meeting is scheduled for September 2003. Results from the public scoping meeting with Federal, State, and local agencies, as well as the public, will be addressed in the DEIS.

3. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel John B. O'Dowd, District Engineer, at the above address.

4. Estimated date of DEIS availability: August 2004.

Leonard Houston,

Chief, Environmental Analysis Branch.

[FR Doc. 03–20266 Filed 8–7–03; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for El Rio Medio, Santa Cruz River, a Feasibility Study of a Portion of the Santa Cruz River in the City of Tucson, Pima County, AZ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Analyses of foreseeable environmental impacts from potential actions along the Santa Cruz River in the City of Tucson, Pima County, Arizona, will commence. No alternative plans have been advanced as yet, so contents of the Draft Environmental Impact Statement (DEIS) remain to be determined during the public scoping process. The portion of the river to be studied extends from about Congress Road (upstream), to about Prince Road (downstream), a distance of about 4.5 river miles. Pima County has identified within this length of the river needs associated with loss of riparian habitat and the presence of cultural resources. Those needs will guide the formulation of plans for this region, the *El Rio Medio (Middle of the River)* segment of the Santa Cruz River.

The U.S. Army Corps of Engineers and Pima County, Arizona, will cooperate in conducting this feasibility study.

DATES: Submit comments by September 22, 2003.

ADDRESSES: District Engineers, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RP, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Fink, Environmental Manager, telephone (602) 640–2001, ext. 232, or Mr. John E. Drake, Study Manager, telephone (602) 640–2021, ext. 271. The cooperating entity, Pima County, requests inquiries to Mr. Lauren E. Robsin, telephone (520) 740–6371, for any additional information.

SUPPLEMENTARY INFORMATION:

1. Authorization

Section 6 of the Flood Control Act of 1938 authorized feasibility studies for El Rio Medio. The 75th Congress of the United States passed what became Public Law 761. This legislation states, in part: ''* * * the Secretary of War [Secretary of the Army since 1947] is hereby authorized and directed to cause preliminary examinations and surveys * * *. At the following locations: Gila River and tributaries, Arizona, * * *'' the Santa Cruz River once flowed into the Gila when a wetter climate prevailed in the southwest, and its watershed still joins that of the Gila near Laveen, Arizona.

2. Background

The Santa Cruz River arises in southeastern Arizona, passes southwesterly into Sonora, Mexico, then turns northward again and re-enters the United States at Nogales, Arizona. Since before the late 16th century when the Spanish explored the southwest, the Santa Cruz River never ran continuously all the way to the Gila. Where underlying bedrock along its course forced water to the surface, the Santa Cruz was perennial. Historically, reliable surface flows along the Santa Cruz could be found intermittently between Nogales and Martinez Hill, to the east of Mission San Xavier in the southerly parts of what is now metropolitan Tucson. Subsurface flow farther north sustained a riparian community. Downstream of the confluence with the so called West Branch of the Santa Cruz the water table again rose above the surface around Sentinel Hill. Year-round water supplied the needs of Mission San Agustín, built in the west side of the river at the foot of the hill where Tohono O'Odham people kept a village (called *stjukshon* by them), and the presidio on the east side of the Santa Cruz. These two historic locations became the origin modern day Tucson.

The feasibility studies to be evaluated by this DEIS will evaluate: (1) Alternative means of structural stabilization to the river's banks between Prince Road (upstream) and W. Congress Street (downstream); (2) opportunities to reclaim biotic properties of the Santa Cruz near downtown Tucson, and elements of the riparian community on its banks; (3) modifications of upland surfaces adjacent to the incised banks to promote growth of appropriate native upland vegetation; (4) designs for recreational facilities which would feature prehistoric elements, historic properties, and biological traits of this portion of the Santa Cruz; (5) integrate these recreational considerations into the Juan Bautista de Anza National Trail; and (6) the efficacy of recharging subsurface aquifers by means of water released into the river bottom downstream of W. Congress Street.

Prehistoric historic cultural resources are abundant along this stretch of the Santa Cruz. Neither federally protected species nor critical habitat for listed species have been identified here.

3. Proposed Action

No plan of action has yet been identified.

4. Alternatives

a.—No Action: No improvement or reinforcement of existing banks or uplands.

b—Proposed Alternative Plans: None have been formulated to date.

5. Scoping Process

Participation of all interested Federal, State, and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying pertinent environmental issues, offering useful information such as published or unpublished data, direct personal experience or knowledge which inform decision making, assistance in defining the scope of plans which ought to be considered, and recommending suitable mitigation measures warranted by such plans. Those wishing to contribute information, ideas, alternatives for actions, and so forth can furnish these contributions in writing to the points of contacts indicated above, or by attending public scoping opportunities. Notice of public scoping meeting will be published in the local newspapers.

When plans have been devised and alternatives formulated to embody those plans, potential impacts will be evaluated in the DEIS. These assessments will emphasize at least fourteen categories of resources: Land use, impromptu historic landfills created by dumping trash over the banks, hazardous wastes, physical environment, hydrology, groundwater, biological, archaeological, geological, air quality, noise, transportation, socioeconomic, and safety.

Dated: July 18, 2003.

Richard G. Thompson,

Colonel, US Army, District Engineer.

[FR Doc. 03–20264 Filed 8–7–03; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,435,795: CARGO LOAD RETRACTABLE RECEIVER.// U.S. Patent No. 6,443,416: PIEZOELECTRICALLY CONTROLLED VIBRATION REDUCING MOUNT SYSTEM.//U.S. Patent No. 6,456,069: FLUXGATE MAGNETIC FIELD SENSOR INCORPORATING FERROMAGNETIC TEST MATERIAL INTO ITS MAGNETIC CIRCUITY. //U.S. Patent No. 6,457,672: PROPULSION NACELLE ALIGNMENT SYSTEM FOR TILT-ROTOR AIRCRAFT.//U.S. Patent No. 6,459,596: METHOD AND APPARATUS FOR A REDUCED PARTS-COUNTS MULTILEVEL RECTIFIER.// U.S. Patent No. 6,460,490: FLOW CONTROL SYSTEM FOR A FORCED RECIRCULATION BOILER.//U.S. Patent No. 6,462,561: STANDOFF DISTANCE VARIATION COMPENSATOR AND EQUALIZER.//U.S. Patent No. 6,466,888: NEURAL NETWORK SYSTEM FOR ESTIMATION OF AIRCRAFT FLIGHT DATA.//U.S. Patent No. 6,481,363: HYDRODYNAMIC PROPULSION FLOW CONTROL FOR MODIFICATION OF FLAP CONTROLLED LIFT.//U.S. Patent No. 6,489,695: EFFICIENCY MAXIMIZED CONVERSION OF ELECTRICAL TO MECHANICAL ENERGY BY MAGNETOSTRICTIVE TRANSDUCTION.//U.S. Patent No. 6,495,088: METHOD OF MANUFACTURING REIN INFUSED CORE STRUCTURE.//U.S. Patent No. 6,505,571: HYBRID HULL CONSTRUCTION FOR MARINE VESSELS.//U.S. Patent No. 6,507,793: METHOD FOR MEASURING VORTICITY.//U.S. Patent No. 6,507,798: TIME-FREQUENCY DEPENDENT DAMPING VIA HILBERT DAMPING SPECTRUM.//U.S. Patent No. 6,514,435: HIGH DENSITY AND FAST PERSISTENT SPECTRAL HOLEBURNING IN II–VI COMPOUNDS FOR OPTICAL DATA STORAGE.//U.S. Patent No. 6,516,603: GAS TURBINE ENGINE SYSTEM WITH WATER INJECTION.//U.S. Patent No. 6,517,289: INFLATABLE VIBRATION REDUCING FAIRING.//U.S. Patent No. 6,522,996: NON-STATIONARY/TRANSIENT SIGNAL FEATURE EXTRACTION SYSTEM.//U.S. Patent No. 6,527,226: FLIGHT DECK HANDLING SYSTEM FOR LANDED AIRCRAFT.//U.S. Patent No. 6,528,234: II–IV COMPOUNDS AS A MEDIUM FOR OPTICAL DATA STORAGE THROUGH FAST PERSISTENT HIGH DENSITY SPECTRAL HOLEBURNING.//U.S. Patent No. 6,530,337: UNDERWATER EXPLOSION PROTECTION FOR WATERCRAFT.//U.S. Patent No. 6,533,257: COMPOSITE VIBRATION DAMPING SYSTEM.//U.S. Patent No. 6,536,366: UNDERWATER EXPLOSION TEST VEHICLE.//U.S. Patent No. 6,540,442: HIGH ENERGY IMPACT ABSORPTION FENDER SYSTEM USING VALVULAR CONTROL LOGIC.// /U.S. Patent No. 6,543,273: EFFICIENT USE OF METALLIC MATERIALS FOR DYNAMIC TEAR TESTING.//U.S. Patent No. 6,543,486: LEAKAGE PLUGGING METHOD AND IMPLEMENT.//U.S. Patent No. 6,544,000: MAGNETOSTRICTIVE ADJUSTMENT OF PROPELLER BLADE.//U.S. Patent No. 6,545,118: POLYMER HAVING NETWORK STRUCTURE.//U.S. Patent No. 6,546,349: OPTIMAL DEGAUSSING USING AN EVOLUTION PROGRAM.// U.S. Patent No. 6,558,218: OVERBOARD RESCUE SYSTEM.//U.S. Patent No. 6,561,739: LOAD TRANSPORTING MODULAR PLATFORM SYSTEM.//U.S. Patent No. 6,564,652: X-WIRE PROBE FOR VELOCITY MEASUREMENTS NEAR THE DOWNSTREAM EDGE OF AN APERTURE.//U.S. Patent No. 6,567,788: PROGRAMMED LOGISTIC SYSTEM AND METHOD FOR TRANSPORTATION AND RECEPTION OF COMMODITIES.//U.S. Patent No. 6,570,819: LOW FREQUENCY ACOUSTIC PROJECTOR.//U.S. Patent No. 6,571,724: STERN DEPRESSOR TYPE MOTION STABILIZATION SYSTEM FOR MARINE VESSEL.//U.S. Patent No. 6,575,113: COOLED JET BLAST DEFLECTORS FOR AIRCRAFT CARRIER FLIGHT DECKS.//U.S. Patent No. 6,578,441: CRANE TESTING APPARATUS AND ASSOCIATED LOAD TESTING METHOD.//U.S. Patent No. 6,580,388: CALCULATION METHODOLOGY FOR COMPLEX TARGET SIGNATURES. //U.S. Patent No. 6,591,246: AUTOMATED SKILLS PROGRAM. //U.S. Patent No. 6,591,773: PROTECTIVE FENDERING SYSTEM FOR OFF-SHORE CARGO TRANSFERRING SURFACE SHIPS.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 29, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–20216 Filed 8–7–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 8, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 4, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other non-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 263,000.

Burden Hours: 263,000.

Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation loan. These documents include revisions made in response to comments received during the 60-day comment period.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2265. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–20223 Filed 8–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–342–000 and Docket No. CP03–343–000]

Discovery Gas Transmission LLC and Discovery Producer Services LLC; Notice of Filings

August 1, 2003.

Take notice that on July 23, 2003, Discovery Gas Transmission LLC (Discovery) 2800 Post Oak Blvd., Houston, Texas, 77056, filed with the Federal Energy Regulatory Commission (Commission) pursuant to Section 7(c) of the Natural Gas Act, and part 157 of the Commission's Regulations an abbreviated application to acquire, lease, and construct and to own and operate certain new delivery points, pipeline compression services and metering and appurtenant facilities to enable Discovery to deliver gas produced offshore to four additional delivery points (Discovery Market Expansion Project) and therefore to new markets in Southern Louisiana, all as more fully set forth in the application.

Discovery states that the four additional delivery points are proposed interconnections with Columbia Gulf Transmission Company (Columbia Gulf), Gulf South Pipeline Company, L.P. (Gulf South), Tennessee Gas Pipeline Company (Tennessee), and Transcontinental Gas Pipe Line Corporation (Transco).

In conjunction with Discovery's application, Discovery Producer Services LLC (DPS) filed an abbreviated application for a limited jurisdiction certificate to provide the compression services to Discovery as necessary to provide the services through Discovery's Market Expansion facilities. Both applications are on file with the Commission and open for public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Discovery proposes to acquire from DPH, Inc. approximately 31 miles of existing, but currently unused, 20-inch pipeline in LaFourche and Terrebone Parishes, Louisiana and from DPS approximately 0.43 miles of 16-inch pipeline in LaFourche Parish, LA. Discovery also proposes to lease 100,000 dekatherms (Dt) per day of capacity on approximately 35 miles of Texas Eastern's system from Discovery's existing interconnect to the proposed interconnection with Transco. Discovery proposes to contract for compression from DPS to ensure adequate compression into the downstream pipelines at the proposed new delivery points. Discovery also proposes to construct the following facilities:

- 0.4 miles of 20-inch pipeline from the pipeline to be acquired from DPS to the pipeline to be acquired from DPH, Inc.;
- 2.1 miles of 20-inch pipeline from Point Au Chien on the pipeline to be acquired from DPH, Inc. to the proposed interconnection with Columbia Gulf;
- 735 feet of 20-inch gas line of an interconnecting facility from the end of the pipeline to be acquired from DPH, Inc. To a Tennessee platform on which will be located the proposed delivery point at Tennessee: and
- Metering, pressure regulating and appurtenant facilities at each of the proposed Columbia Gulf and Transco delivery points and upstream of the proposed Tennessee delivery point.

Discovery states that in order for it to provide up to 150,000 Dt per day of firm service through its Market Expansion facilities, Discovery proposes to purchase 150,000 Dt per day of compression services from DPS under a Compression Services Agreement. Discovery states that DPS is currently willing to provide this compression needed by Discovery for approximately two cents per Dt, provided that the Commission issues it a Limited Jurisdiction Certificate allowing DPS to use any 2 or 3 of its 4 existing leased compressors at any given time for compression needed by Discovery.

Discovery explains that it held a non-binding open season in April 2003 for its proposed Market Expansion Project seeking expressions of interest in service to the proposed new delivery points. Discovery asserts that it has executed or is in the process of negotiating binding precedent agreements for 112,000 Dt per day of firm service. Discovery further asserts that it also expects to ship gas on the new project on an interruptible basis for these and other shippers. Discovery proposes a maximum usage fee for Rate Schedule FT–2 (Market Expansion) service of 7.40 cents per Dt, based on firm service billing determinants of 150,000 Dt per day and not based on any allocation of costs to interruptible service. Discovery states that it also

seeks approval of 14.80 cents per Dt as its maximum Rate Schedule IT (Market Expansion) rate and that this rate is based on a 50 percent load factor derivation of Discovery's Rate Schedule FT–2 rate. Discovery states that because of its usage fee-only design of its Rate Schedule FT–2 rate, there is no capacity being released on Discovery's system, and Discovery is totally at risk for the recovery of the cost of its Market Expansion facilities.

Any questions regarding the application may be directed to Kevin R. Rehm, Vice President, Discovery Gas Transmission LLC, 2800 Post Oak Boulevard—Level 36, Houston, Texas 77056, at (713) 215–2694, with fax at (713) 215–3050.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

Comment Date: August 22, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20251 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–409–000 and Docket No. CP01–409–000]

Tractebel Calypso Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement and Announcement of a Public Comment Meeting for the Proposed Tractebel Calypso Pipeline Project

August 1, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Tractebel Calypso Pipeline, L.L.C. (Tractebel Calypso) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including system alternatives, major route alternatives, and route variations, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of approximately 42.5 miles of 24-inch-diameter, interstate natural gas pipeline extending from a receipt point on the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas to delivery points in Broward County, Florida. In addition, associated ancillary facilities proposed to be constructed include two block valves and one meter and pressure regulation station/block valve. These pipeline facilities are part of a larger project that involves a nonjurisdictional LNG facility and natural gas pipeline from the liquefied natural gas facility located near Freeport, Bahamas to the EEZ boundary that would be constructed by Tractebel's subsidiary, Hawksbill Creek LNG, Ltd. after authorization by the Bahamas Environmental Science and Technology (BEST) Commission. The application for BEST Commission authorization has not been filed.

The purpose of the Tractebel Calypso Pipeline Project is to transport 832,000 dekatherms/day (Dth/day) of natural gas on an annual basis to new markets in southeastern Florida.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to:

Magalie Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of Gas Branch 3, PJ11.3,

• Reference Docket No. CP01–409–000; and

• Mail your comments so that they will be received in Washington, DC on or before September 15, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to accepting written and electronically filed comments, one public meeting to receive comments on this DEIS will be held at the following time and location.

Date and time	Location
Monday, September 8, 2003 at 7 pm.	I.T. Parker Community Center 901 N.E. Third Street, Dania Beach, FL 33004 (954) 924–3698.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnLineSupport@ferc.gov.* The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to*http://www.ferc.gov/esubscribenow.htm.*

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20250 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2601–007.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Bryson Project.

f. *Location:* On the Oconaluftee River, in Swain County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or *allan.creamer@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status: 60 days from the filing date shown in paragraph (c), or September 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Bryson Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Oconaluftee River. The project consists of the following features: (1) A 341-foot-long, 36-foot-high concrete multiple arch dam, consisting of, from left to right facing downstream, (a) A concrete, non-overflow section, (b) two gravity spillway sections, each surmounted by a 16.5-foot-wide by 16-foot-high Tainter gate, (c) an uncontrolled multiple-arch spillway with four bays, and (d) a 64.5-foot-wide powerhouse; (2) a 1.5-mile-long, 38-acre impoundment at elevation 1828.41 msl; (3) two intake bays, each consisting of an 8.5-foot-diameter steel intake pipe with a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse containing two turbine/generating units (vertical Francis and vertical Leffel Francis turbines), having an installed capacity of 980 kW; (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5,534,230 kWh (1942–2002). Duke Power uses the Bryson Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2601), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter ..	October 2003.
Issue Acceptance letter	December 2003.
Issue Scoping Document 1 for comments.	February 2004.
Request Additional Information.	April 2004.
Issue Scoping Document 2.	May 2004.
Notice of application is ready for environmental analysis.	August 2004.
Notice of the availability of the draft EA.	February 2005.
Notice of the availability of the final EA.	May 2005.
Ready for Commission's decision on the application.	July 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20252 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2602–005.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Dillsboro Project.

f. *Location:* On the Tuckasegee River, in Jackson County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r)

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or *allan.creamer@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or September 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Dillsboro Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Tuckasegee River, which is dependent on Duke Power's East Fork and West Fork Tuckasegee River projects. The Dillsboro Project consists of the following features: (1) A 310-foot-long, 12-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) A concrete, non-overflow section, (b) a 14-foot-long uncontrolled spillway section, (c) a 20-foot-long spillway section with two 6-foot-wide spill gates, (d) a 197-foot-long uncontrolled spillway section, (e) a 64.5-foot-long powerhouse, (f) an 80-foot-long intake section, and (g) a concrete, non-overflow section; (2) a 0.8-mile-long, 15-acre impoundment at elevation 1972.00 msl; (3) two intake bays, each consisting of a reinforced concrete flume and grated trashracks having a clear bar spacing varying from 2.0 to 3.38 inches; (4) a powerhouse containing two turbine/generating units (vertical Francis and Leffel Type-Z turbines), having an installed capacity of 225 kW; (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 912,330 kWh (1958–2002). Duke Power uses the Dillsboro Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2602), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter ..	October 2003.
Issue Acceptance letter	December 2003.
Issue Scoping Document 1 for comments.	February 2004.
Request Additional Information.	April 2004.
Issue Scoping Document 2.	May 2004.
Notice of application is ready for environmental analysis.	August 2004.
Notice of the availability of the draft EA.	February 2005.
Notice of the availability of the final.	EA May 2005.
Ready for Commission's decision on the application.	July 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20253 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2603–012.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Franklin Project.

f. *Location:* On the Little Tennessee River, in Macon County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or *allan.creamer@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or September 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Franklin Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Little Tennessee River. The Franklin Project consists of the following features: (1) A 462.5-foot-long, 35.5-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) A 15-foot-long non-overflow section, (b) a 54-foot-long ungated Ogee spillway, (c) a 181.5-foot-long gated spillway section, having six gated, ogee spillway bays, (d) a 54-foot-long ungated Ogee spillway, (e) a 25-foot-long non-overflow section, (f) a 63-foot-long powerhouse, and (g) a 70-foot-long non-overflow section; (2) a 4.6-mile-long, 174-acre impoundment at elevation 2000.22 msl; (3) three intake bays, each consisting of a flume and grated trashracks having a clear bar spacing of 3 inches; (4) a powerhouse containing two turbine/generating units (vertical Leffel Type-Z turbines), having an installed capacity of 1,040 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5,313,065 kWh (1941–2002). Duke Power uses the Franklin Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2603), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter ..	October 2003.
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Request Additional Information.	April 2004.
Issue Scoping Document 2.	May 2004.
Notice of application is ready for environmental analysis.	August 2004.
Notice of the availability of the draft EA.	February 2005.
Notice of the availability of the final EA.	May 2005.
Ready for Commission's decision on the application.	July 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20254 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2619–012.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Mission Project.

f. *Location:* On the Hiwassee River, in Clay County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or *allan.creamer@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or September 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Mission Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Hiwassee River, with is regulated by TVA's Chatuge dam. The Mission Project consists of the following features: (1) A 397-foot-long, 50-foot-high concrete gravity dam, consisting of, from left to right facing downstream, (a) Three bulkhead sections, (b) seven ogee spillway sections, surmounted by 14-foot-high by 16-foot-wide gates, (c) four bulkhead sections, (d) a powerhouse intake structure, and (e) four bulkhead sections; (2) a 47-acre impoundment at elevation 1658.17 msl; (3) three intake bays, each consisting of an 8-foot-diameter steel-cased penstock and a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse containing three turbine/generating units (vertical Francis turbines), having an installed capacity of 1,800 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 8,134,370 kWh (1941–2002). Duke Power uses the Mission Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2619), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
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Issue Acceptance letter	December 2003.
Issue Scoping Document 1 for comments.	February 2004.
Request Additional Information.	April 2004.
Issue Scoping Document 2.	May 2004.
Notice of application is ready for environmental analysis.	August 2004.
Notice of the availability of the draft EA.	February 2005.
Notice of the availability of the final EA.	May 2005.
Ready for Commission's decision on the application.	July 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20255 Filed 8–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6642–7)

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http//www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed July 28, 2003 Through August 01, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030354, Draft EIS, FHW, MO, U.S. Route 40/61 Bridge Location Study Over the Missouri River, Improvement to Transportation System, Section 9 of the Rivers and Harbor Act Permit, and U.S. Army COE Section 10 and 404 Permits, Missouri River, St. Charles and St. Louis Counties, MO, Comment Period Ends: September 26, 2003, Contact: Donald Neumann (573) 636–7104.

EIS No. 030355, Draft EIS, COE, AK, King Cove Access Project, To Provide a Transportation System between the City of King Cove and the Cold Bay Airport, Aleutians East Borough (AEB), Section 10 and 404 Permits, Alaska Peninsula, AK, Comment Period Ends: September 22, 2003, Contact: Lloyd H. Fanter (907) 753–2712. This document is available on the Internet at: *http://www.kingcoveaccesseis.com.*

EIS No. 030356, Final EIS, FHW, PA, Central Susquehanna Valley Transportation Project, Improve Transportation, PA 0015 Section 088, Funding and COE Section 404 Permit, Snyder, Northumberland and Union Counties, PA, Wait Period Ends: September 10, 2003, Contact: James A. Cheatham (717) 221–3461.

EIS No. 030357, Final Supplement, AFS, UT, Long Deer Vegetation Management Project, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Wait Period Ends: September 08, 2003, Contact: Ronald S. Wilson (435) 865–3200.

EIS No. 030358, Draft EIS, BLM, UT, Uinta Basin Natural Gas Project, Proposed to Produce and Transport Natural Gas in the Atchee Wash Oil and Gas Production Region, Resource Development Group, Right-of-Way Grant, U.S. Army COE Section 404 Permit and Endangered Species Act Permit, Uintah County, Utah, Comment Period Ends: September 22, 2003, Contact: Jean Nitschke Sinclear (435) 781–4400. This document is available on the Internet at: *http://www.blm.gov/utah/vernal.*

EIS No. 030359, Final EIS, COE, CA, Imperial Beach Shore Protection Project, Shore Protection and Prevention of Damage to Adjacent Beachfront Structures, Silver Strand Shoreline, City of Imperial Beach, San Diego County, CA, Wait Period Ends:

September 8, 2003, Contact: Joy Jaiswal (213) 452–3851.

EIS No. 030360, Draft EIS, AFS, OR, Monument Fire Recovery Project and Proposed Non Significant Forest Plan Amendments, Implementing Four Alternatives for Recovery, Malheur National Forest, Prairie City Ranger District, Grant and Baker Counties, OR, Comment Period Ends: September 23, 2003, Contact: Ryan Falk (541) 820–3800. This document is available on the Internet at: *http://www.fs.fed.us/R2/malheur/monument.*

EIS No. 030361, Final EIS, AFS, ID, UT, OR, Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Southwest Idaho Ecogroup, several counties, ID, Malhaur County, OR and Box Elder County, UT, Wait Period Ends: September 8, 2003, Contact: Joey Pearson (208) 373–4145.

EIS No. 030362, Draft EIS, FRC, FL, Tractebel Calypso Pipeline Project, To Provide Natural Gas Transportation Service for 832,000 dekatherms/day (Dth/day) to South Florida, Endangered Species Act, Right-of-Way, U.S. Army COE Section 10 and 404 Permits and Exclusive Economic Zone (EEZ) with the Bahamas, Fort Lauderdale, Broward County, FL, Comment Period Ends: September 22, 2003, Contact: Thomas Russo (202) 502–8004. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030363, Final EIS, AFS, OR, Steamboat Mountain Mining Operations, Surface Quarry or ''Open Pit'' Mineral Extraction, Plan-of-Operation Approval, Appelgate Adaptive Management Area, Rogue River National Forest, Applegate Ranger District, Jackson County, OR, Wait Period Ends: September 8, 2003, Contact: Bengf Hamner (541) 858–2304.

EIS No. 030364, Final EIS, FTA, HI, Oahu Primary Corridor Transportation Project, Improvements from Kapolei in the west to the University of Hawaii-Manoa and Waikiki in the east, Major Investment Study, In the City and County of Honolulu, HI, Wait Period Ends: September 8, 2003, Contact: Donna Turchie (415) 744–2737.

Amended Notices

EIS No. 030196, Draft EIS, AFS, MN, Chippewa and Superior National Forests Land and Resource Management Plans Revision, Implementation, Beltrami, Cass, Itasca, Cook, Lake and St. Louis Counties, MN, Comment Period Ends: September 11, 2003, Contact: Duane Lula (218) 626–4300. Revision of FR Notice Published on 5/9/2003: CEQ Comment Period Ending 8/6/2003 has been Extended to 9/11/2003.

Dated: August 5, 2003.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–20308 Filed 8–7–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2618]

Petitions for Clarification of Action in Rulemaking Proceeding

August 4, 2003.

Petitions for Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 25, 2003. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20215 Filed 8–7–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P4–03]

Petition of China Shipping Container Lines Co., Ltd., for Permanent Full Exemption From Section 9(C) of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that China Shipping Container Lines Co., Ltd. (''Petitioner'') has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715; and 46 CFR 502.69, for a permanent full exemption from the 30-day waiting period requirement of Section 9(c) of the 1984 Act, 46 U.S.C. app. 1708(c). Petitioner seeks an exemption so that it can lawfully publish rate decreases in all U.S. foreign commerce to be effective upon publication, without regard to whether they are the same as or lower than competing carriers' rates.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than August 25, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel: Brett M. Esber, Esquire, Blank Rome LLP, Watergate 600 New Hampshire Avenue, NW., Washington, DC 20037. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *secretary@fmc.gov.*

Copies of the Petition are available at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling 202–523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

By the Commission.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–20224 Filed 8–7–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P1–03]

Petition of China Shipping Container Lines Co., Ltd. for a Limited Exemption From Section 9(c) of the Shipping Act of 1984; Notice of Discontinuance

The Commission has received notice that the Petitioner in this matter is withdrawing its Petition due to changed circumstances. Therefore this proceeding is discontinued.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–20225 Filed 8–7–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Community Capital Bancshares, Inc., Albany, Georgia; to acquire 100 percent of the voting shares of First Bank of Dothan, Dothan, Alabama.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. North American Bancshares, Inc., Sherman, Texas; to acquire 100 percent of the voting shares of Pioneer Bankshares, Inc., Fredericksburg, Texas, and thereby indirectly acquire Pioneer II Bankshares, Inc., Dover, Delaware, and Pioneer National Bank, Fredericksburg, Texas.

Board of Governors of the Federal Reserve System, August 4, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–20242 Filed 8–7–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Health and Human Services, HHS.

ACTION: Policy guidance document.

SUMMARY: The Department of Health and Human Services (HHS) publishes revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (''Revised HHS LEP Guidance''). This revised HHS LEP Guidance is issued pursuant to Executive Order 13166. HHS is seeking comment on the revised HHS LEP Guidance for a 120-day period ending on January 6, 2004.

DATES: This Guidance is effective immediately. Comments must be submitted on or before January 6, 2004. HHS will review all comments and will determine if modifications to the Guidance are necessary. This Guidance supplants existing guidance on the same subject originally published at 65 FR 52762 (August 30, 2000).

ADDRESSES: Comments should be addressed to Deeana Jang with ''Attention: LEP Comments,'' and should be sent to 200 Independence Avenue, SW, Room 506F, Washington, DC 20201. Comments may also be submitted by e-mail at *LEP.comments@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Onelio Lopez at the Office for Civil Rights, U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Room 506F, Washington, DC 20201, addressed with ''Attention: LEP Comments;'' telephone 202–205–0192; TDD: toll-free 1–800–537–7697. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: The United States Department of Health and Human Services (HHS) is publishing revised ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (''Revised HHS LEP Guidance''). This guidance was originally published on August 30, 2000, and included a 60-day comment period. See 65 FR 52762. This original guidance was republished for additional comment on February 1, 2002, pursuant to a memorandum issued by the United States Department of Justice on October 26, 2001. See 67 FR 4968.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant-making agencies. See 67 FR 41455 (June 18, 2002).

This revised HHS LEP Guidance reflects consideration of the comments received and the subsequent guidance of DOJ. HHS welcomes comments from the public on the revised guidance document, and has announced the extended comment period to encourage comment from the public and from recipients regarding experience in applying this revised guidance. Following the comment period, HHS will evaluate whether further revisions to the guidance are necessary or appropriate.

The text of the guidance appears below. Appendix A to the guidance is a series of questions and answers that provides a useful summary of a number of the major aspects of the guidance.

It has been determined that this revised HHS LEP Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and is not subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993).

Dated: August 4, 2003.

Richard M. Campanelli,

Director, Office for Civil Rights.

I. Background and Legal History

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be

denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

Department of Health and Human Services regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.'' 45 CFR 80.3(b)(2).

The Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare (HHS's predecessor), 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, the Department of Justice (''DOJ'') issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Federal Guidance'').

Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP guidance for recipients of DOJ federal financial assistance in light of Sandoval.[1] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Consistent with Executive Order 13166, HHS developed its own guidance document for recipients and initially issued it on August 30, 2000. ''Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency,'' 65 FR 52762 (August 30, 2000) (''HHS Guidance''). Following the instructions in the October 26, 2001 memorandum from Ralph F. Boyd, Jr., the Department republished, on February 1, 2002, its existing guidance document for additional public comment. ''Office for Civil Rights; Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency,'' 67 FR 4968 (February 1, 2002).

[1] The memorandum noted that some commentators had interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, *e.g.*, Sandoval, 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. DOJ stated that Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166, or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

II. Revised HHS LEP Guidance

Following republication of our guidance in February 2002, the Department received nearly 200 public comments. Most comments were in full support of the principles behind the HHS Guidance, and a number supported maintaining the guidance without change. While the comments reflected recognition that effective communication is critical for necessary health and human services, many commentors raised serious concerns about coverage, compliance costs, and use of family and friends as interpreters. In addition, many providers of services requested assistance from the Office for Civil Rights on how to comply with both general and specific provisions of the guidance.

On July 8, 2002, Assistant Attorney General Boyd issued a memorandum expressing the need for consistency across federal agency LEP guidance documents. Specifically, he requested that the Department (and all other affected agencies) use the DOJ LEP guidance (published at 67 FR 41455, June 18, 2002) as a model, and revise and republish the HHS guidance based on that model for public comment.

The DOJ's role under Executive Order 13166 is unique. The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. DOJ's guidance stated the following principles. ''Consistency among Departments of the federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English.

This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance.''

HHS believes that the DOJ model guidance responds to the important issues raised in comments on the HHS document published in February, and the Department is confident that the DOJ LEP Guidance serves as an appropriate model for HHS to adopt. The Department notes that it has made certain modifications for purposes of clarity and organization, and a few additional modifications to accommodate particular programmatic needs and purposes.

There are many productive steps that the federal government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients of Federal financial assistance may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed care organizations, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HHS intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

As discussed earlier, in certain circumstances, the failure to ensure that LEP persons can effectively participate in, or benefit from, federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and the Title VI regulations against national origin discrimination. Specifically, the failure of a recipient of Federal financial assistance from HHS to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria HHS will use in evaluating whether recipients are in compliance with Title VI and the Title VI regulations.

III. Who Is Covered?

Department of Health and Human Services regulations, 45 CFR 80.3(b)(2), require all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.[3] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Recipients of HHS assistance may include, for example:

- Hospitals, nursing homes, home health agencies, and managed care organizations.
- Universities and other entities with health or social service research programs.
- State, county, and local health agencies.
- State Medicaid agencies.
- State, county and local welfare agencies.
- Programs for families, youth, and children.
- Head Start programs.
- Public and private contractors, subcontractors and vendors.
- Physicians and other providers who receive Federal financial assistance from HHS.

Recipients of HHS assistance do not include, for example, providers who only receive Medicare Part B payments.[4]

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[5]

Example: HHS provides assistance to a state department of health to provide immunizations for children. All of the operations of the entire state department of health—not just the particular immunization programs—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be limited English proficient, or ''LEP,'' and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by HHS recipients and should be considered when planning language services may include such as those:

- Persons seeking Temporary Assistance for Needy Families (TANF), and other social services.
- Persons seeking health and health-related services.
- Community members seeking to participate in health promotion or awareness activities.
- Persons who encounter the public health system.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

[3] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to apply additionally to the programs and activities of federal agencies, including HHS.

[4] HHS's Title VI regulations do not apply to (i) Any federal financial assistance by way of insurance or guaranty contracts, (ii) the use of any assistance by any individual who is the ultimate beneficiary under any program which receives federal financial assistance, and (iii) any employment practice, under any such program, or any employer, employment agency, or labor organization, except as otherwise described in the Title VI regulations. 45 CFR 80.2.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its implementing regulations, only funds directed to the particular program or activity that is out of compliance could be terminated. 42 U.S.C. 2000d–1.

• Parents and legal guardians of minors eligible for coverage concerning such programs.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages, or, in fact, that, in certain circumstances, recipient-provided language services are not necessary. (As discussed below, recipients may want to consider documenting their application of the four-factor test to the services they provide.) For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HHS recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps, if any, they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a particular office of the county or city health department serves a large LEP population, the appropriate service area is most likely that office, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In certain circumstances, it is important in conducting this analysis to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted when appropriate to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations which may be underserved because of existing language barriers and who would benefit from the recipient's program, activity, or service, were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Recipient's Program, Activity or Service

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a recipient's program, activity, or service on a daily basis, a recipient has greater duties than if an LEP individual's contact with the recipient's program, activity, or service is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. For example, a drug treatment program that encounters LEP persons on a daily basis most likely may have a greater obligation than a drug treatment program that encounters LEP persons sporadically. The obligations of both programs are greater than that of a drug treatment program which has never encountered a LEP individual where the service area includes few or no LEP individuals.

In applying this standard, certain recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. For example, in areas where a community health center serves a large LEP population, outreach may be appropriate. On the other hand, for most individual physicians or dentists, outreach may not be necessary.

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

(3) The Nature and Importance of the Recipient's Program, Activity, or Service

The more important the recipient's activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Thus, the recipient should consider the importance and urgency of its program, activity, or service. If the activity is both important and urgent—such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery—it is more likely that relatively immediate language services are needed. Alternatively, if the activity is important, but not urgent—such as the communication of information about, and obtaining informed consent for, elective surgery where delay will not have any adverse impact on the patient's health, or communication of information regarding admission to the hospital for tests where delay would not affect the patient's health—it is more likely that language services are needed, but that such services can be delayed for a reasonable period of time. Finally, if an activity is neither important nor urgent—such as a general public tour of a facility—it is more likely that language services would not be needed. The obligation to communicate rights to a person whose benefits are being terminated or to provide medical services to an LEP person who is ill differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming.

Decisions by a federal, state, or local entity to make an activity compulsory, such as job search programs in welfare to work programs, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take to comply with Title VI. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be ''reasonable'' where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

* * * * *

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons, to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient—or to another recipient—for language assistance. In certain circumstances, pursuant to an arrangement, where there is no discriminatory intent, the purpose is beneficial and will result in better access for LEP persons, it may be appropriate for a recipient to refer the LEP beneficiary to another recipient. For example, if two physicians in the same field, one with a Spanish-speaking assistant and one with a Vietnamese-speaking assistant, practice in the same geographic area and have a custom/practice of referring patients between each other, it may be appropriate for the first doctor to refer LEP Vietnamese patients to the second doctor and for the second doctor to refer LEP Spanish patients to the first doctor. In certain circumstances, a referral would not be appropriate: for example, a Korean speaking LEP woman comes to a battered women's shelter requesting assistance. Although the shelter has space, it has no arrangement to provide language assistance for LEP persons. Instead, as with all LEP persons, the staff only offer her a prepared list of three shelters in the neighborhood that generally provide language assistance. The staff does not check to assure that any of the three alternative shelters can actually provide the Korean language assistance she needs, or that any have space available for her.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. In some circumstances, where the importance and nature of the activity, the number or proportion and frequency of contact with LEP persons may be high and the relative costs and resources needed to provide language services may be low, it may be appropriate for a recipient to hire bilingual staff or staff interpreters. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, in which case language services for the particular activity may not be necessary. In situations that fall in between the two, it may be appropriate for recipients to use contract interpreters or telephone language lines to provide language services to LEP persons in contact with their program or activity. A hospital emergency room in a city with a significant Hmong population may need immediately available oral interpreters and may want to give serious consideration to hiring some bilingual staff. (Of course, many hospitals have already made such arrangements.) On the other hand, a physician's practice which encounters one LEP Hmong patient per month on a walk-in basis

[7] Recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

may want to use a telephone interpreter service. In contrast, a dentist in an almost exclusively English-speaking neighborhood who has rarely encountered a patient who did not speak English and has never encountered a Hmong-speaking patient may not need, pursuant solely to Title VI, to provide language services for a LEP Hmong individual who comes in for a dental cleaning.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services (interpretation and translation, respectively). Regardless of the type of language service provided, quality and accuracy of those services is critical to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

A. Considerations Relating to Competency of Interpreters and Translators

Competence of Interpreters. Recipients should be aware that competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to perform written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should take reasonable steps, given the circumstances, to assess whether the interpreters:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);

To the extent necessary for communication between the recipient or its staff and the LEP person, have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [8]

Understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires;

Understand and adhere to their role as interpreters without deviating into other roles—such as counselor or legal advisor—where such deviation would be inappropriate (particularly in administrative hearings contexts).

Some recipients, such as some state agencies, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of administrative proceedings, the use of certified interpreters is strongly encouraged.[9]

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hospital emergency room, for example, should be as high as possible, given the circumstances, while the quality and accuracy of language services in other circumstances need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. When the timeliness of services is important, and delay would result in the effective denial of a benefit, service, or right, language assistance likely cannot be unduly delayed. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

For example, language assistance could likely not be delayed in a medical emergency, or when the time period in which an individual has to exercise certain rights is shortly to expire. On the other hand, when an LEP person is seeking a routine medical examination or seeks to apply for certain benefits and has an ample period of time to apply for those benefits, a recipient could likely delay the provision of language services by requesting the LEP person to schedule an appointment at a time during which the recipient would be able to have an appropriate interpreter available.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting; a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. As noted above, certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[10] Community

[8] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, the interpreter should be aware when languages do not have an appropriate direct interpretation of certain terms and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, so that the interpreter and recipient can work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[9] For those languages in which no formal accreditation or certification currently exists, certain recipients may want to consider a formal process for establishing the credentials of the interpreter, or assess whether a particular level of membership in a professional translation association can provide some indicator of professionalism.

[10] For instance, there may be languages which do not have an appropriate direct translation of some specialized medical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients may find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and other

organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, to translate nonvital documents that have no legal or other consequence for LEP persons who rely on them, a recipient may use translators that are less skilled than the translators it uses to translate vital documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to take reasonable steps to determine that the quality and accuracy of the translations permit meaningful access by LEP persons.

B. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as social service eligibility workers or hospital emergency room receptionists/workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a child support administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. While telephone interpreters can be used in numerous situations, they may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing, if available, may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it may be important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. Because such volunteers may have other demands on their time, they may be more useful in providing language access for a recipient's less critical programs and activities where the provision of language services can reasonably be delayed. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. However, when a recipient encounters an LEP person attempting to access its services, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, the recipient should, except as noted below, respect an LEP person's desire to use an interpreter of his or her own choosing (whether a professional interpreter, family member, or friend) in place of the free language services expressly offered by the recipient. However, a recipient may not require an LEP person to use a family member or friend as an interpreter.

In addition, in emergency circumstances that are not reasonably foreseeable, a recipient may not be able to offer free language services, and temporary use of family members or friends as interpreters may be necessary.

technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

However, with proper planning and implementation, recipients should be able to avoid most such situations.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether making a record of that choice, and of the recipient's offer of assistance, is appropriate.

As with the use of other non-professional interpreters, the recipient may need to consider issues of competence, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect the desire of the LEP person to use an interpreter of his or her own choosing. Recipients should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent in the circumstances, but are also appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation.

In some circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter. For these reasons, where the LEP individual has declined the express offer of free language assistance and has chosen to use a family member, friend or other informal interpreter, if a recipient later determines that a family member or friend is not competent or appropriate, the recipient should provide competent interpreter services to the LEP person in place of or, if appropriate, as a supplement to the LEP individual's interpreter. For HHS recipient programs and activities, this is particularly true, for example, in administrative hearings, child or adult protective service investigations, situations in which life, health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient may want to consider providing its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well.

Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using minor children as interpreters. The recipient should take reasonable steps to ascertain whether the LEP person's choice is voluntary, whether the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and whether the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Again, while the use of a family member or friend may be appropriate, if that is the choice of the LEP person, the following are examples of where the recipient should provide an interpreter for the LEP individual:

- A woman or child is brought to an emergency room and is seen by an emergency room doctor. The doctor notices the patient's injuries and determines that they are consistent with those seen with victims of abuse or neglect. In such a case, use of the spouse or a parent to interpret for the patient may raise serious issues of conflict of interest and may, thus, be inappropriate.
- A man, accompanied by his wife, visits an eye doctor for an eye examination. The eye doctor offers him an interpreter, but he requests that his wife interpret for him. The eye doctor talks to the wife and determines that she is competent to interpret for her husband during the examination. The wife interprets for her spouse as the examination proceeds, but the doctor discovers that the husband has cataracts that must be removed through surgery. The eye doctor determines that the wife does not understand the terms he is using to explain the diagnosis and, thus, that she is not competent to continue to interpret for her husband. The eye doctor stops the examination and calls an interpreter for the husband. A family member may be appropriate to serve as an interpreter if preferred by the LEP person in situations where the service provided is of a routine nature such as a simple eye examination. However, in a case where the nature of the service becomes more complex, depending on the circumstances, the family member or friend may not be competent to interpret.

C. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. In determining what outreach materials may be most useful to translate, such recipients may want to consider consulting with appropriate community organizations.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision

of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Given the foregoing considerations, vital written materials could include, for example:

- Consent and complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings.
- Notices advising LEP persons of free language assistance.
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Nonvital written materials could include:

- Hospital menus.
- Third party documents, forms, or pamphlets distributed by a recipient as a public service.
- For a non-governmental recipient, government documents and forms.
- Large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated).
- General information about the program intended for informational purposes only.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Some recipients may serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is usually a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their Title VI obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, may be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HHS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where an application of the four factor test leads to the determination that oral language services are needed and are reasonable. Conversely, oral interpretation of documents may not substitute for translation of vital written documents. For example, oral interpretation of the rules of a half-way house or residential treatment center may not substitute for translation of a short document containing the rules of the half-way house or residential treatment center and the consequences of violating those rules.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

If, after completing the four-factor analysis, a recipient determines that it should provide language assistance services, a recipient may develop an implementation plan to address the identified needs of the LEP populations it serves. Such recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons (''LEP plan'') for use by a recipient's employees who serve or interact with the public could be an appropriate and cost-effective means of documenting compliance with Title VI and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans may provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits may lead recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HHS

recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying Title VI obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it may want to consider alternative and reasonable ways to articulate how it is providing meaningful access in compliance with Title VI. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

For the recipient who decides to develop a written implementation plan, the following five steps may be helpful in designing such a plan; they are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. Similarly, this step of an LEP implementation plan requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm,* and accessed at *http://www.lep.gov.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to identify themselves.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

An effective LEP plan would likely include a process for identifying staff who need to be trained regarding the recipient's LEP plan, a process for training them, and the identification of the outcomes of the training. Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan may include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It may be important to take reasonable steps to see to it that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

An effective LEP plan would likely include a description of the process by which to provide notice of the services that are available to the LEP persons it serves or, to the extent that a service area exists, that reside in its service area and are eligible for services. Once a recipient has decided, based on the four factors, that it will provide language services, it may be important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients may want to consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or public benefits and services, or activities run by HHS recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[11]
- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered, and provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

An effective LEP plan would likely include a process for a recipient to monitor its implementation of its plan and for updating its plan as necessary. For example, determining, on an ongoing basis, whether new documents,

[11] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm,* which also can be accessed at *http://www.lep.gov.* These signs could, for example, be modified for recipient use.

programs, services, and activities need to be made accessible for LEP individuals may be appropriate, and recipients may want to provide notice of any changes in services to the LEP public and to employees. In addition, changes in demographics, types of services, or other needs may require annual reevaluation of an LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan may be to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals and establish management accountability. Some recipients may also want to consider whether they should provide opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the HHS Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Office for Civil Rights, and the entire Department, are committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, but that some may lack knowledge of what is required of them or information concerning the resources that are available to them that would assist in meeting their Title VI obligations. Accordingly, HHS is committed to engaging in outreach to its recipients and to being responsive to inquiries from its recipients. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources Services Administration, Office for Civil Rights, and Office of Minority Health, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS also provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters, translation of written materials, and foreign language Web sites.

Further, HHS is committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organization to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations, to educate their members on these matters.

HHS continues to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes suggestions and comments in this regard. The HHS Office for Civil Rights, in conjunction with other HHS components, through direct contact and its Web site at *http://www.hhs/gov/ocr,* will continue to provide technical assistance that assists HHS recipients in understanding and complying with their obligations under Title VI, and assists recipients and the public by identifying resources offered by the Office for Civil Rights and other HHS components that facilitate compliance with Title VI, with respect to LEP persons. This and other helpful information may also be accessed at *http://www.lep.gov.*

The Title VI regulations provide that HHS will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, HHS will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, HHS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HHS must secure compliance through the termination of federal assistance after the HHS recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. HHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HHS proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HHS's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, HHS acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, HHS will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance with Title VI, but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HHS recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are

encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

Appendix A

Questions and Answers Regarding the Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

1. Q. What is the purpose of the guidance on language access released by the Department of Health and Human Services (HHS)?

A. The purpose of the Policy Guidance is to clarify to members of the public, and to providers of health and social services who receive Federal financial assistance from HHS, the responsibility of such providers to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964. Among other things, this guidance clarifies existing legal requirements by providing a description of the factors providers of health and social services who receive Federal financial assistance from HHS should consider in determining and fulfilling their responsibilities to LEP persons under Title VI.

2. Q. What does the policy guidance do?

A. The policy guidance does the following:

- Reiterates the principles of Title VI with respect to LEP persons.
- Discusses the reasonable policies, procedures and other steps that recipients can take to ensure meaningful access to their program by LEP persons.
- Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.
- Explains to recipients of Federal financial assistance that OCR will determine compliance on a case by case basis, in light of the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the recipient's program, activity or service; (3) the nature and importance of the recipient's program, activity, or service; and (4) the resources available to the recipient and costs.
- Provides that, based on these four factors, recipients with limited resources will not have the same compliance responsibilities applicable to recipients with greater resources. All recipients will have a great deal of flexibility in achieving compliance.
- Provides that OCR will offer extensive technical assistance for recipients.

3. Q. Does the guidance impose new requirements on recipients?

A. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. Title VI requires that recipients take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. Over the past three decades, OCR has conducted thousands of investigations and reviews involving language differences that affect the access of LEP persons to medical care and social services. This guidance synthesizes the legal requirements that OCR has been enforcing for over three decades.

4. Q. Who is covered by the guidance?

A. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (1) Operates, provides or engages in health, or social service programs and activities, and (2) receives Federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to the following entities, which may receive federal financial assistance: hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; state, county and local welfare agencies; federally-funded programs for families, youth and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from HHS.

5. Q. How does the guidance affect small practitioners and providers who are recipients of federal financial assistance?

A. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to take reasonable steps to ensure meaningful access for persons with limited English proficiency. OCR will assess compliance on a case by case basis and will take into account the following factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's program, activity or service; (2) the frequency with which LEP individuals come in contact with the program, activity or service; (3) the nature and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. There is no ''one size fits all'' solution for Title VI compliance with respect to LEP persons, and what constitutes ''reasonable steps'' for large providers may not be reasonable where small providers are concerned. Thus, smaller recipients with smaller budgets will not be expected to provide the same level of language services as larger recipients with larger budgets. OCR will continue to be available to provide technical assistance to HHS recipients, including sole practitioners and other small recipients, seeking to operate an effective language assistance program and to comply with Title VI.

6. Q. The guidance identifies some specific circumstances which OCR will consider to be strong evidence that a program is in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient/covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?

A. No. The circumstances outlined in the guidance are intended to identify circumstances which amount to a ''safe harbor'' for recipients who desire greater certainty with respect to their obligations to provide written translations. This means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. However, the failure to provide written translations under the circumstances outlined in the ''safe harbor''does not mean there is non-compliance. Rather, the safe harbor provides a tool which recipients may use to consider whether the number or proportion of LEP persons served call for written translations of vital documents into frequently encountered languages other than English. However, even if the safe harbors are not used, if written translation of certain documents would be so financially burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances when, upon application of the four factors, translation services are required.

7. Q. The guidance makes reference to ''vital documents'' and notes that, in certain circumstances, a recipient/covered entity may have to translate such documents into other languages. What is a vital document?

A. As clarified by the guidance, the extent of Title VI obligations will be evaluated based on a four-factor test including the nature or importance of the service. In this regard, the guidance points out that documents deemed ''vital'' to the access of LEP persons to programs and services may often have to be translated. Whether or not a document (or the information it contains or solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve. Thus, vital documents could include, for instance, consent and complaint forms, intake forms with potential for important health consequences, written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings, notices advising LEP persons of free language assistance, written tests that do not assess English language competency, but test competency for a particular license, job or skill for which knowing English is not required, or applications to participate in a recipient's program or activity or to receive recipient benefits or services.

8. Q. Will recipient/covered entities have to translate large documents such as managed care enrollment handbooks?

A. Not necessarily. Some large documents may contain no vital information, and others will contain vital information that will have to be translated. Again, the obligation to

translate will depend on application of the four factors. In this context, vital information may include, for instance, the provision of information in appropriate languages other than English, or identifying where a LEP person might obtain an interpretation or translation of the document. However, depending on the circumstances, large documents such as enrollment handbooks may not need to be translated or may not need to be translated in their entirety.

9. Q. May an LEP person use a family member or friend as his or her interpreter?

A. Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a recipient of federal financial assistance, who upon application of the four factors is required to provide an interpreter, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Recipients should also consider the special circumstances discussed in the guidance that may affect whether a family member or friend should serve as an interpreter, such as whether the situation is an emergency, and concerns over competency, confidentiality, privacy, or conflict of interest.

10. Q. May a recipient/covered entity require a LEP person to use a family member or a friend as his or her interpreter?

A. No.

11. Q. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of federal fund recipients?

A. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, where a LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not generally directly related to national origin or language and thus is not a Title VI issue. Under these circumstances, a recipient should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a recipient should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Of course, other law may be implicated in this context. For instance, Section 504 of the Rehabilitation Act of 1973 requires that federal fund recipients provide sign language and oral interpreters for people who have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with visual impairments; and the Americans with Disabilities Act imposes similar requirements on health and human service providers.

12. Q. What assistance is available to help to recipients who wish to come into compliance with Title VI?

A. For over three decades, OCR has provided substantial technical assistance to recipient/covered entities who are seeking to ensure that LEP persons can meaningfully access their programs or services. Our regional staff is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, OCR can help identify best practices and successful strategies used by other federal fund recipients, identify sources of federal reimbursement for translation services, and point providers to other resources.

In addition, the entire Department is also committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources and Services Administration, Office for Civil Rights, Office of Minority Health and Substance Abuse and Mental Health Services Administration, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, and that increased understanding of compliance responsibilities and knowledge about cost-effective resources that are increasingly available to them, will assist recipients/covered entities in meeting Title VI obligations. Accordingly, HHS is committed to providing outreach to its recipients and to being responsive to queries from its recipients. It is also committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organizations to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations to educate their members on these matters. HHS will continue to promote best practices in language access and fund model demonstration programs in this area. The HHS Office for Civil Rights, in conjunction with other HHS components, will continue to provide technical assistance and outreach to HHS recipients to assist them in understanding and complying with their obligations under Title VI and to provide information to recipients and the public through its Web site at *http://www.hhs/gov/ocr.* LEP information and resources can also be found at *http://www.lep.gov.*

13. Q. How will OCR enforce compliance by recipient/covered entities with the LEP requirements of Title VI?

A. The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to take reasonable steps to provide meaningful access to LEP persons is enforced and implemented by OCR through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that OCR will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, OCR will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, OCR must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, OCR may secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing. OCR may also refer the matter to the Department of Justice to secure compliance through any other means authorized by law.

At all stages of an investigation, OCR engages in voluntary compliance efforts and provides technical assistance to recipients. During these efforts, OCR proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, OCR's primary concern is to ensure that the recipient's policies and procedures contain reasonable steps to provide meaningful access for LEP persons to the recipient's programs, activities or services. As a result, the vast majority of all complaints have been resolved through such voluntary efforts.

14. Q. Does issuing this guidance mean that OCR will be changing how it enforces compliance with Title VI?

A. No. How OCR enforces Title VI is governed by the Title VI implementing regulations. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews, have not changed.

15. Q. What is HHS doing to promote access for LEP persons to its own programs and services?

A. HHS provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters; translation of written materials; and foreign language web sites. HHS will continue to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes any suggestions in this regard.

[FR Doc. 03–20179 Filed 8–6–03; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–194]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from January 2003 through March 2003. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on May 23, 2003 [68 FR 28228]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between January 1, 2003 and March 31, 2003, public health assessments were issued for the sites listed below:

NPL Sites

Illinois

Downers Grove Groundwater Investigation (a/k/a Ellsworth Industrial Park) (PB2003–104162)

Massachusetts

Hatchery Road (PB2003–104163)

Dated: August 4, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–20230 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–70–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03088]

Monitoring and Evaluation, and Information Systems Improvement to Implement Integrated Care and Prevention of HIV/AIDS in the Republic of Mozambique; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to develop a five year strategic and operational plan, and monitoring and evaluation activities, in order to: respond to the HIV/AIDS epidemic; establish an information system for monitoring and evaluating HIV/AIDS; and extend implementation of Prevention of Mother to Child Transmission activities in Mozambique. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Ministry of Health of Mozambique. No other applications are solicited.

The MOH is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Mozambique for the following reasons: (1) The MOH is uniquely positioned, in terms of legal authority, ability, and credibility among Mozambican citizens, to collect crucial data on HIV/AIDS as well as to provide care to HIV infected patients; (2) The MOH in Mozambique is mandated by the Mozambican government to implement care and treatment activities necessary for the control of epidemics, including HIV/AIDS; (3) The MOH already has an established network of health care facilities throughout Mozambique. They include treatment centers, maternal-child health clinics, and HIV/AIDS care sites. These facilities are accessible and provide health information and care for patients with HIV/AIDS, enabling the MOH to become immediately engaged in the activities listed in this announcement; and (4) The MOH has trained physicians, nurses, and social workers already working in their network of health care facilities around the country who can carry out the activities listed in this announcement.

In April of 2002, the United States Department of Health and Human Services signed a memorandum of understanding with Mozambique's Ministry of Health to collaborate on research and program implementation related to HIV/AIDS.

C. Funding

Approximately $900,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Alfredo E. Vergara, Ph.D., Director, Global AIDS Program, Mozambique, Centers for Disease Control and Prevention, Department of Health and Human Services, JAT Complex, Building 1, 420 Av. 25 de Setembro, Fourth Floor #5, Maputo, Mozambique, Telephone: (258 1)31 47 47, Fax: 31 44 60, E-mail: *vergaraa@mozcdc.co.mz.*

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20229 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03063]

Enhancement of HIV/AIDS Surveillance Activities and HIV Reference Laboratory Program in Malawi; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the enhancement of HIV/AIDS surveillance activities and an HIV reference laboratory program in Malawi. The Catalog of Federal Domestic Assistance number for this program is 93.978.

B. Eligible Applicant

Assistance will be provided only to Malawi Ministry of Health and Population (MOHP) in Lilongwe, the capital of Malawi. The Ministry of Health and Population (MOHP) is a unique agency in the sovereign country of Malawi, charged with implementing health care and public health measures nationwide. There is no other agency in Malawi charged with planning and actually implementing health care and public health activities in the public sector. The MOHP of the Government of Malawi is the only agency in the country that conducts HIV surveillance.

Over the past 18 months, the National AIDS Commission (NAC), another branch of the Malawi Government, was temporarily given responsibility for surveillance at the national level. In 2003, this responsibility is moving back to the MOHP from the NAC. CDC has been providing financial and technical support to the NAC for surveillance and is now arranging through this Cooperative Agreement to provide a smooth transition of surveillance activities back to the MOHP. Currently, a transitional team from NAC and the surveillance unit at the MOHP have responsibility for surveillance. In 2003, this responsibility will move back to the MOHP from NAC.

CDC–GAP is relatively new in Malawi and has no other formal funding agreements with the MOHP. CDC GAP CDC looks forward to sharing its expertise in all areas of surveillance with the MOHP, the only national agency in the government of Malawi that has responsibility and authority to implement HIV/AIDS programs in the health sector.

The MOHP is located in Lilongwe, the capital of Malawi. The CHSU of the MOHP is located in Lilongwe, the capital of Malawi. CHSU is a well-established entity in the MOHP and has responsibility for preventive services, including surveillance, and for the national lab. The national lab has been without adequate resources and needs CDC's technical and financial support in order to fully perform its function as a national reference lab. This is critically important at this particular juncture as Malawi expects to get a large Global Fund award and will need the national reference lab functions in order to provide quality HIV services to the population using these funds.

C. Funding

Approximately $750,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimate may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Margarett Davis, MD, MPH, Kang'ombe Building 8 West, Lilongwe, Malawi, Telephone Number: 265–1–775–188, Fax Number: 265–1–775–848, E-mail address: DavisM@malcdc.co.mw, C/o U.S. Embassy, P.O. Box 30016. Lilongwe 3, Malawi.

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20232 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03104]

Strengthening Infectious Disease Control in the Democratic Republic of the Congo; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to strengthen the capacities of national control programs and local nongovernmental organization partners to reduce the transmission and impact of HIV/AIDS, other sexually transmitted infections (STIs), Tuberculosis (TB) and Malaria. The Catalog of Federal Domestic Assistance number for this program is 93.947.

B. Eligible Applicant

Assistance will be provided only to the Kinshasa School of Public Health (KSPH). No other applications are being solicited. The KSPH is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to the DRC for the following reasons:

- The KSPH is strategically placed to coordinate work with key departments of the Ministry of Health (MOH) and other DRC ministries as well as local and international partners.
- The KSPH has a well-grounded base of understanding and working knowledge of basic public health principles, specifically in the areas of research, monitoring, evaluation, training and formal public health education. KSPH is the only institution of its caliber in Central Africa.
- The KSPH has extensive experience in working on infectious disease control activities with U.S. Government agencies, including CDC and USAID, as well as collaborating partners such as Family Health International (FHI).
- The KSPH has a transparent and flexible administrative and financial management capacity to conduct extensive public health and infectious disease control activities in active collaboration with CDC and the MOH.

The KSPH is uniquely situated to operate as an independent, third party health institution that maintains a strategic separation administratively and organizationally from the official governmental structures.

C. Funding

Approximately $500,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Karen Hawkins-Reed, Public Health Advisor, CDC/GAP/DRC, Unit 31550, APO AE 908282–1550, Telephone: 243–997–0829, FAX: 243–880–3274, e-mail: *kyh0@cdc.gov*.

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20234 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03073]

Strengthen Tamil Nadu State AIDS Control Society Response to HIV/AIDS Chennai, India; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the Tamil Nadu State AIDS Control Society (TNSACS). The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to TNSACS. The State Government possesses the capability and institutional capacity to collaborate with the CDC Global AIDS Program (GAP), India in support of activities in the public sector in a way that no other agency or organization in the State of Tamil Nadu is qualified to do.

The State Government and the National AIDS Control Organization (NACO) are currently implementing their HIV/AIDS activities and programs through the TNSACS, which is registered under the Government of India Societies Act. TNSACS is recognized at the national level as the policy and planning organization for all programs related to HIV throughout the state. TNSACS is charged with carrying out and implementing the National and State Government policies on HIV/AIDS.

TNSACS has the infrastructure, including systems to manage funds, as well as the human resources; the supervisory experience; and the expertise needed to track funds.

TNSACS, the State of Tamil Nadu, and CDC GAP have worked collaboratively in developing a plan to build infrastructure and provide training around information systems and a quality assured laboratory at the Chennai-based Government Hospital for Thoracic Medicine (GHTM) since the CDC GAP established activities in Tamil Nadu in 2001. The TNSACS is uniquely qualified to continue to support the GHTM activities initiated by CDC GAP. It is also the most appropriate organization to support the replication and expansion of CDC GAP activities into other areas of the state.

C. Funding

Approximately $50,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Nancy Hedemark Nay, MPH, Associate Director for Operations, Global AIDS Program, C/o U.S. Consulate, 220 Mount Road, Chennai, 600 006, India, Telephone: 91–44–2811–2000. e-mail address: *nhn1@cdc.gov.*

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20235 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03126]

Landmine Survivor Peer-Support Networks in Mine-Affected Countries; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative program to continue the development, implementation, and evaluation of landmine survivor peer-support networks in the landmine-affected countries of Bosnia, Jordan, El Salvador, Ethiopia, Mozambique and Viet Nam. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the Landmine Survivors Network (LSN), the recipient of funding under the original announcement. The CDC cooperative agreement with LSN was required by FY2000 congressional conference language. The sponsors of the language specifically directed CDC to directly support LSN's project. Staffers from the offices of several sponsors have, on a regular basis, followed up on the progress of the cooperative agreement.

In addition to this congressional intent, LSN is singularly qualified to conduct activities under this program, because it:

1. Designed, started and administers these networks.

2. Has existing staff, both domestically and internationally, trained in public health and social sciences related to landmine survivors.

3. Has a significant global presence, allowing it to coordinate with local governments and international organizations in the implementation of projects related to landmine survivors.

4. Is the primary non-governmental organization (NGO) working with landmine survivor issues.

5. Has an existing field presence including the only peer-support networks in each of the countries identified in this announcement.

It would be financially, logistically, and programmatically difficult for an organization other than LSN to continue this program.

C. Funding

Approximately $3,300,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Michael Gerber, MPH, International Emergency and Refugee Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, Mail Stop F–48, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–3520, E-mail address: *mcg9@cdc.gov*.

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20227 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03160]

Cooperative Agreement for Plague Clinical Trials with Prospect International in Madagascar; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to evaluate the effectiveness and safety of Gentamicin and other antibiotics for the treatment of human plague, to evaluate newly available rapid dipstick tests for the diagnosis of human plague, and to develop a long-term collaboration between the CDC and Madagascar in the area of plague research and prevention. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to Prospect International (PI) in Antananarivo, Madagascar. No other applications are solicited.

PI is the most appropriate and qualified non-governmental organization in Madagascar to conduct the activities specified under this cooperative agreement for the following reasons:

- PI has established collaborations with Madagascar health authorities on health infrastructure such as the Integrated Disease Surveillance and Response (IDSR) strategy.
- PI has the requisite expertise for management and coordination of the logistics and finances of complicated health projects.
- PI has the proven ability to successfully collaborate with CDC on health research and health infrastructure projects.
- PI has established collaborations with the Madagascar Ministry of Health as well as other high-level government offices.

C. Funding

Approximately $145,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Jacob Kool, MD, Ph.D., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Rampart Road (Foothills Campus), Fort Collins, CO 80521, Telephone: 970–266–3540, E-mail: *jkool@cdc.gov.*

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20228 Filed 8–7–03; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–437, 437A, and 437B; CMS 576]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Unit Criteria Worksheet, and Rehabilitation Hospital Criteria Worksheet, and Supporting Regulations at 42 CFR 412.20–412.32; *Form No.:* CMS–437, 437A, and 437B (OMB# 0938–0358); *Use:* The rehabilitation hospital/unit and psychiatric unit criteria worksheets are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system; *Frequency:* Annually; *Affected Public:* Business or other-for-profit, Not-for-profit institutions, State, local, or tribal government.; *Number of Respondents:* 2,580; *Total Annual Responses:* 2,580; *Total Annual Hours:* 645.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization (OPO) Request for Designation and Supporting

Regulations in 42 CFR 486.301—486.325; *Form No.:* CMS–576 (OMB# 0938–0512); *Use:* The information provided on this form serves as a basis for certifying OPOs for participation in the Medicare and Medicaid programs and will indicate whether the OPO is meeting the specified performance standards for reimbursement of service; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 118.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: July 31, 2003.

Dawn Willinghan,

Acting CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–20271 Filed 8–7–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–684A–I, CMS–685, CMS–R–136]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–684A–I (OMB# 0938–0658); *Use:* The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets CMS's need for meaningful, consistent, and verifiable data when evaluating contract proposals; *Frequency:* Other: Every 3 years; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 1,080.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–685 (OMB# 0938–0657); *Use:* Submission of semi-annual cost reports allows CMS to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, CMS can analyze line item costs to identify any significant aberrations; *Frequency:* Semiannually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108.

3. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Proper Claim Not Filed and Supporting Regulation Contained in 42 CFR 411.32(c); *Form No.:* CMS–R–136) (OMB# 0938–0564); *Use:* Section 411.32(c) requires a provider, supplier, or beneficiary to notify Medicare that a claim to a third party was improperly filed; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals or households; *Number of Respondents:* 13,311; *Total Annual Responses:* 13,311; *Total Annual Hours:* 0.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: July 31, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–20272 Filed 8–7–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1304 Head Start Performance Standards.

OMB No.: 0970–0148.

Description: Head Start Performance Standards require Head Start and Early Head Start programs and Delegate Agencies to maintain program records. The Administration for Children and Families is proposing to renew the authority to require certain recordkeeping in all programs as provided for in 45 CFR 1304 Head Start Performance Standards. These Standards prescribe the services that Head Start and Early Head Start

programs provide to enrolled children and their families.

Respondents: Head Start and Early Head Start grantees.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Standard	2590	16	41.8	1,732,192

Estimated Total Annual Burden Hours: 1,732,192.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: August 4, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–20259 Filed 8–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Family and Child Experience Survey (FACES) and Quality Research Centers.

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration for Children and Families (AFC) of the Department of Health and Human Services is requesting comments on plans to collect data on a new cohort for the Head Start Family and Child Experience Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Xtria, LCC and The CDM Group as their subcontractors) (contract #GS23F8144H; order #03Y00318101D) to collect information on Head Start performance measures.

FACES will involve four waves of data collection. The first wave will occur in Fall 2003. Data will be collected on a sample of approximately 2,721 children and families from about 378 classrooms across 66 programs. Data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Further, site visitors will interview Head Start teachers and make observations of the types and quality of classroom activities.

The second wave, which will be a repeat of the Fall 2003 data collection, will occur in Spring 2004 when the sample children are at the end of their first year of Head Start.

The third wave will occur in Spring 2005, and will involve follow-up with children who at this time are either completing a second year in Head Start, or completing kindergarten. For those children who are still attending Head Start, data collection will follow the same procedures as in Spring 2004. For those children attending kindergarten, data collection will include assessments of Head Start children, an ''update'' survey of the information collected from the parent interview, and ratings of the children's academic progress and school adjustment by kindergarten teachers.

The fourth wave of data collection will occur in Spring 2006. Children who attended kindergarten the previous year will not be included in this wave. The procedures for this effort will be the same as for kindergartners in Spring 2005.

For the Head Start Quality Centers, 100 children in eight sites will be followed during each of two program years, 2003–2004 and 2004–2005. FACES procedures will be carried out, including child assessments, parent and teacher interviews, and observations of types and quality of classroom activities.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649(d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates:

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS TO THE HEAD START FAMILY AND CHILD EXPERIENCE SURVEY (FACES 2003)—FALL 2003, SPRING 2004, SPRING 2005, SPRING 2006

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003):				
Head Start Parent Interview	2,721	1	1.00	2,721
Head Start Child Assessment	2,721	1	0.66	1,796
Teacher Child Rating	378	7	0.25	662
Program Director Interview	66	1	1.00	66
Center Director Interview	171	1	1.00	171

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS TO THE HEAD START FAMILY AND CHILD EXPERIENCE SURVEY (FACES 2003)—FALL 2003, SPRING 2004, SPRING 2005, SPRING 2006—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Education Coordinator Interview	171	1	0.75	128
Teacher Interview	378	1	1.00	378
Year 2 (2004):				
Head Start Parent Interview	2,313	1	0.75	1,735
Head Start Child Assessment	2,313	1	0.66	1,527
Teacher Child Rating	378	6	0.25	567
Family Service Coordinator Interview	171	1	0.75	128
Year 3 (2005):				
Head Start Parent Interview	818	1	0.75	614
Head Start Child Assessment	818	1	0.66	540
Teacher Child Rating	121	7	0.25	212
Kindergarten Parent Interview	1,082	1	0.75	812
Kindergarten Child Assessment	1,082	1	0.75	812
Kindergarten Teacher Questionnaire	1,082	1	0.50	541
Year 4 (2006):				
Kindergarten Parent Interview	695	1	0.75	521
Kindergarten Child Assessment	695	1	0.75	521
Kindergarten Teacher Questionnaire	695	1	0.50	348

Estimated Total Burden Hours (FACES): 14,800.

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS TO THE HEAD START QUALITY RESEARCH CENTERS (FACES QRC 2003)—FALL 2003, SPRING 2004, FALL 2004, SPRING 2005

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003):				
Head Start Parent Interview	800	1	1.00	800
Head Start Child Assessment	800	1	0.66	528
Teacher Child Rating	80	10	0.25	200
Teacher Interview	80	1	1.00	80
Year 2 (2004):				
Head Start Parent Interview	1,480	1	1.00	1,480
Head Start Child Assessment	1,480	1	0.66	977
Teacher Child Rating	160	8	0.25	320
Year 3 (2005):				
Head Start Parent Interview	680	1	1.00	680
Head Start Child Assessment	680	1	0.66	449
Teacher Child Rating	180	6	0.25	270

Estimated Total Burden Hours (QRC): 5,784.

Estimated Annualized Burden for both FACES and Quality Research Centers is 6861 hours. This annual burden was calculated by dividing total burden hours by three years.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Washington, DC, Attn: Desk Officer for ACF, e-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: August 4, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–20260 Filed 8–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0417]

Agency Information Collection Activities; Announcement of OMB Approval; Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30–Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30–Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 2003 (68 FR 36676), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0513. The approval expires on July 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20199 Filed 8–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1993P–0174]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Requirements for Liquid Medicated Animal Feed and Free-Choice Medicated Animal Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 8, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Waiver From Labeling Requirements for New Animal Drugs Intended for Use in Liquid Medicated Animal Feed

Proposed § 558.5(i) specifies procedures for obtaining a waiver from labeling requirements for certain drugs intended for use in animal feed or drinking water but not approved for use in liquid medicated feed. The request for waiver must include a copy of the product label; a description of the formulation; and information to establish that the physical, chemical, or other properties of the product are such that diversion to use in liquid medicated feeds is unlikely. This information would be collected if the manufacturer or sponsor chose not to include the required warning ''FOR USE IN_____ ONLY, NOT FOR USE IN LIQUID MEDICATED FEEDS'' on its product label. The sponsor or manufacturers would then need to satisfy the requirements of the waiver section of the regulation. All other data collections are covered under OMB control number 0910–0032.

Medicated feed manufacturing facilities and sponsors of new animal drugs used in the manufacture of medicated feed.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Proposed 21 CFR Section	No. of Respondents	Annual Frequency per Responses	Total Annual Responses	Hours per Response	Total Hours
558.5(i)	1	1	1	5	5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived from data by our Division of Animal Feeds, Center for Veterinary Medicine, FDA. Only one respondent was used in these figures because although this particular waiver has been part of the regulations since 1973, it has never been utilized. We estimated it would take 5 hours to compile the required information because of the time necessary to explain why the drug would not be diverted to use in liquid feed.

Dated: August 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20200 Filed 8–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0198]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Requirements for Medicated Feed Mill License

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 8, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medicated Feed Mill License Application—21 CFR Part 515 (OMB Control Number 0910–0037)—Extension

In the **Federal Register** of November 19, 1999 (64 FR 63195), FDA published a final rule implementing the feed mill licensing provisions of the Animal Drug Availability Act of 1966 (Public Law 104–250). The rule added a new 21 CFR part 515 to provide the requirements for medicated feed mill licensing.

The rule sets forth the information to be included in medicated feed mill license applications and supplemental applications. It also sets forth the criteria for, among other things, the approval and refusal to approve a medicated feed mill license application, as well as the criteria for the revocation and/or suspension of a license.

Respondents to this collection of information are individuals or firms that manufacture medicated animal feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Responses	Total Annual Responses	Hours per Response	Total Hours
515.10	7	1	7	0.25	1.75
515.11	100	1	100	0.25	25.00
515.23	25	1	25	0.25	6.25
515.30	0.15	1	0.15	24.00	3.60
Total Burden Hours					36.6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510.305	1,160	1	1,160	0.03	34.80

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of respondents is derived from agency data on the number of medicated feed manufacturers entering the market each year, changing ownership or address, requesting voluntary revocation of a medicated feed mill license, and those involved in revocation and/or suspension of a license. The estimate of the time required for this reporting requirement is based on the agency communication with industry.

Dated: August 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20201 Filed 8–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0324]

Certain Antibiotic New Animal Drug Products and Use Combinations Subject to Listings in the New Animal Drug Regulations; Drug Efficacy Study Implementation; Notice of Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of opportunity for hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing the effective conditions of use for certain drug products and use combinations in the following four categories: Bacitracin methylene disalicylate single-ingredient Type A medicated articles, oxytetracycline and neomycin fixed-combination Type A medicated articles, and combination drug Type B and Type C medicated feeds for poultry containing bacitracin. The agency is also proposing to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness, following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. For applications proposed to be withdrawn, the agency is providing an opportunity for hearing. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to remove certain obsolete or redundant sections of the new animal

drug regulations where these subject drug products and use combinations are listed. That proposed rule contains background information about those regulations and also for this action.

DATES: Submit written appearances and a request for a hearing by September 8, 2003. Submit all data and analysis upon which a request for a hearing relies by October 7, 2003. Submit supplemental NADAs by November 6, 2003.

ADDRESSES: Written requests for a hearing, data and analysis, and other written appearances are to be identified with Docket No. 2003N–0324 and submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit supplemental new animal drug applications to the Director, Office of New Animal Drug Evaluation, c/o Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e-mail: *abeaulie@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1962, Congress amended the new drug provisions, which then applied to new drugs intended for both man and other animals, to require that a new drug be shown to be both safe and effective before marketing (the Drug Amendments of 1962, Public Law 87–781, 76 Stat. 780). Before 1962, animal drug approvals did not require a demonstration of effectiveness. Under the 1962 amendments, the effectiveness requirement was made applicable, after a 2-year transition period, to animal drugs approved before 1962. This pre-1962 drug evaluation is known as the Drug Efficacy Study Implementation (DESI) program. In response to the need for an integrated approach, the DESI program evaluated the efficacy of all animal drug products, including antibiotic new animal drugs used in feed and antibiotic feed use combinations (see, e.g., § 558.15(b)(3) (21 CFR 558.15(b)(3)) and 37 FR 21279 (October 7, 1972)). Under the DESI program, a new animal drug approved before October 10, 1962, could continue to be approved if the sponsor submitted a supplemental NADA to revise the indications for use to those for which the agency determined the drug to be effective.

This document announces the effective indications for which certain new animal drugs and drug combinations may be marketed, and provides an opportunity for hearing on those indications for which products may not be marketed because they lack substantial evidence of effectiveness. There are nine products subject to this notice, and they fall into the following four categories:

1. Bacitracin methylene disalicylate (BMD) single-ingredient Type A medicated article,
2. Oxytetracycline and neomycin fixed-combination Type A medicated articles,
3. Combination drug Type B and Type C medicated feeds for poultry containing nicarbazin, and
4. Combination drug Type B and Type C medicated feeds for poultry containing bacitracin.

Under section 108(b)(2) of Public Law 90–399 (82 Stat. 353), the Animal Drug Amendments of 1968, any approval of a new animal drug granted prior to the law's effective date, whether through approval of a new drug application, master file, antibiotic regulation, or food additive regulation, continues in effect and is subject to change in accordance with the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b). The nine products that are the subject of this notice are subject to this transitional approval provision.

In addition, they are all listed in the interim marketing provisions of § 558.15. A history of the interim marketing provisions and the approval status of the products listed in them is contained in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. The agency has DESI finalized many of the products subject to the listings in § 558.15, codifying their approvals in part 558 (21 CFR part 558) subpart B (see, e.g., 61 FR 35949, July 9, 1996). The nine products subject to this notice are the only ones listed in § 558.15 that are subject to DESI and that have not yet been DESI finalized.

II. Findings of Effectiveness of Certain Drugs Listed in § 558.15

A. Bacitracin Methylene Disalicylate Single-Ingredient Type A Medicated Articles

The following drug is covered by the DESI findings of effectiveness for BMD in animal feed:

• NADA 141–137, FORTRACIN MD 50 (BMD) Type A medicated article used to make Type B and Type C medicated feeds. Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137.

In 1970, FDA announced its DESI findings of effectiveness for feed use of BMD (35 FR 11531, July 17, 1970, as corrected by 35 FR 15408, October 2, 1970). Table 1 of this document summarizes FDA's conclusions.

TABLE 1.—DESI FINDINGS OF EFFECTIVENESS FOR USE OF BACITRACIN METHYLENE DISALICYLATE IN ANIMAL FEED

Bacitracin methylene disalicylate in grams per ton (g/ton)	Indications for use	Limitations
4 to 50	Chickens, turkeys, and pheasants: For increased rate of weight gain and improved feed efficiency.	
5 to 20	Quail not over 5 weeks of age: For increased rate of weight gain and improved feed efficiency.	

The agency notes that there are several potential sources of confusion regarding NADA 141–137 and the interim marketing provision for BMD in § 558.15(g)(1) (further information about this provision is contained in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**). Section 558.15(g)(1) contains a table that lists antibacterial Type A medicated articles that are eligible for interim marketing based on compliance with other provisions of § 558.15, and specifies the sponsors of these articles and their approved species, use levels, and indications for use. An example of the problems with this table is that the sponsors it lists for BMD—A. L. Laboratories, Inc., and Fermenta Animal Health Co.—are outdated. These companies are predecessors in interest

to the current sponsors, which are Alpharma, Inc., and Pennfield Oil Co., respectively.

A second, more complicated example involves BMD's approved conditions of use. Rather than listing the use levels and indications for use for which interim marketing is permitted, the table in § 558.15(g)(1) contains a reference to another section of the regulations. When the table was first published in 1976, this reference was to the uses and indications listed in 21 CFR 121.225 and 121.252 (see 41 FR 8282, February 25, 1976). These were the conditions of use for which the BMD products were approved, under the transitional approval provisions of the Animal Drug Amendments of 1968. Shortly thereafter, these uses were recodified in § 558.76 and the reference in § 558.15(g)(1) was adjusted accordingly (41 FR 10984, March 15, 1976). Since that recodification, § 558.76 has been amended numerous times to reflect the approval of supplemental applications, based on proprietary data, that were filed by sponsors other than Pennfield Oil Co. or its predecessors in interest (see, e.g., 63 FR 40824, July 31, 1998). At the time of these amendments to § 558.76, the table in § 558.15(g)(1) was not updated by removing the simple cross reference to § 558.76 and by adding in its place a correct reference or a correct listing of the uses for which interim marketing was permitted. Thus, the table is misleading unless the reader already knows the indications for which the sponsors are approved or reviews the changes made over time to §§ 558.15 and 558.76.

The confusion caused by the reference in § 558.15(g)(1) to the use levels and indications for use in § 558.76 is illustrated by, and perhaps exacerbated by, the administrative record for NADA 141–137. As happened with several other products listed in § 558.15, it became apparent in the 1990s that the administrative record for this NADA was incomplete, calling into question its approval status. This is described in more detail in the proposed rule to remove § 558.15 published elsewhere in this issue of the **Federal Register**. In 1998, to help resolve the approval status, the company that owned the product at the time, Boehringer Ingelheim Vetmedica, Inc. (BIVI), certified that the product was approved pre-1968 and provided supporting information. This certification was made by a letter dated September 18, 1998, as amended by a letter dated November 17, 1998. It provided historical information about the product, stated that the product had been approved prior to 1968, and stated that it was subject to the transitional approval provisions of the Animal Drug Amendments of 1968. The company also provided information about the approved indications. One piece of information, included with the September letter, is a product label dated February 1969. BIVI stated that this label is consistent with § 558.15. This was probably intended to mean the interim marketing table in § 558.15 as it was originally issued in 1976 since the label's indications are generally consistent with, albeit somewhat narrower than, BMD's indications listed in the table at the time. Given this consistency and given that the date of the label is just a few months before the effective date of the transitional approval provision, the label provides good evidence that the product was subject to transitional approval and the indications for which it was transitionally approved.

However, two other pieces of information appear to be inconsistent with the indications for which FDA believes Pennfield Oil Co.'s BMD product is transitionally approved. The November 1998 letter from BIVI states that the product was approved for ''the indications for use itemized in 21 CFR § 558.78,'' which was presumably meant to be § 558.76 since the other regulation (§ 558.78) concerns bacitracin zinc. It is unclear whether BIVI meant the indications in § 558.76 in 1976 or 1998. Also unclear is the meaning of two labels faxed by BIVI to FDA on December 9, 1998. These are in the product's current NADA file, although without any cover page or other explanatory notes. These labels, one a subset of the other, specify indications that are much closer to those listed in § 558.76 in 1998 than to those that were transitionally-approved. It is possible that the labels BIVI faxed to FDA on December 9, 1998, were based on § 558.76 as it existed at that time, given that the BMD listing in § 558.15 contained the misleading cross-reference to § 558.76.

On December 17, 1998, FDA sent BIVI a letter stating that the agency received the company's November certification that amended the September letter, that the certification would be used as part of the administrative record of approval, and that the agency planned to codify this approval as soon as possible given resource constraints and public health priorities. FDA's letter also referred to the indications ''specified in the labeling attached to [BIVI's] letter.'' However, FDA's letter does not state to which labeling it is referring.

We are not aware of any additional approved indications beyond those listed in the original § 558.76 from 1976 for Pennfield Oil Co.'s product. If the sponsor has additional information on the other approved indications, such information should be provided to FDA during this administrative process.

B. Oxytetracycline and Neomycin Fixed-Combination Type A Medicated Articles

The agency is making findings of effectiveness for oxytetracycline and neomycin fixed-combination Type A medicated articles for use in animal feed. These findings cover the following drugs:

- NADA 94–975, NEO–TERRAMYCIN (oxytetracycline and neomycin). Phibro Animal Health, 710 Route 46 East, suite 401, Fairfield, NJ 07004.
- NADA 138–939, NEO–OXY (oxytetracycline and neomycin). Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137.

Both of these products are two-way, fixed-combination Type A medicated articles used to make two-way combination drug Type C medicated feeds at use levels for the species and indications listed in § 558.15(g)(2). The drug sponsor information in this listing is outdated, however, designating Pfizer, Inc., Pennfield Oil Co., and VPO, Inc., instead of Phibro Animal Health and Pennfield Oil Co.

The National Academy of Sciences/National Research Council (NAS/NRC) assisted FDA in its DESI program for numerous animal drug products. While NAS/NRC did not evaluate the efficacy data relating to these combinations, FDA has conducted such a review. This review was based on the agency's findings of effectiveness for oxytetracycline and neomycin single-ingredient feed use products, which in turn were based on NAS/NRC's evaluation (see 35 FR 7089, May 5, 1970, and 36 FR 837, January 19, 1971). FDA has determined that its previous findings of effectiveness for the single ingredients are applicable to the combinations in the absence of information indicating interference in effectiveness between individual ingredients. The agency's review also considered information about the effectiveness submitted to these two NADAs, although this information did not alter the agency's conclusions based on the single-ingredient findings. Tables 2, 3, 4, and 5 of this document summarize FDA's findings of effectiveness for oxytetracycline and neomycin fixed-combination Type A medicated articles for use in animal feed.

TABLE 2.—DESI FINDINGS OF EFFECTIVENESS FOR USE OF OXYTETRACYCLINE AND NEOMYCIN ADMINISTERED IN CHICKEN FEED IN A 1:1 RATIO

Oxytetracycline and neomycin amount in g/ton of feed	Indications for use	Limitations
10 to 50	Chickens: For increased rate of weight gain and improved feed efficiency.	Do not feed to chickens producing eggs for human consumption.
100 to 200	Chickens: For control of infectious synovitis caused by *Mycoplasma synoviae*; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days (d); do not feed to chickens producing eggs for human consumption; in low calcium feed, withdraw 3 d before slaughter.
400	Chickens: For control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption; in low calcium feeds, withdraw 3 d before slaughter.
500	Chickens: For reduction of mortality due to air sacculitis (air-sac- infection) caused by *E. coli* susceptible to oxytetracycline.	Feed continuously for 5 d; do not feed to chickens producing eggs for human consumption; withdraw 24 hours before slaughter; in low calcium feeds withdraw 3 d before slaughter.

TABLE 3.—DESI FINDINGS OF EFFECTIVENESS FOR USE OF OXYTETRACYCLINE AND NEOMYCIN ADMINISTERED IN TURKEY FEED IN A 1:1 RATIO

Oxytetracycline and neomycin amount	Indications for use	Limitations
10 to 50 g/ton of feed	Growing turkeys: For increased rate of weight and improved feed efficiency.	Do not feed to turkeys producing eggs for human consumption.
100 g/ton of feed	Turkeys: For control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption.
200 g/ton of feed	Turkeys: For control of infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption.
25 milligrams per pound (mg/lb) of body weight daily	Turkeys: For control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption.

TABLE 4.—DESI FINDINGS OF EFFECTIVENESS FOR USE OF OXYTETRACYCLINE AND NEOMYCIN ADMINISTERED IN SWINE FEED IN A 1:1 RATIO

Oxytetracycline and neomycin amount	Indications for use	Limitations
10 to 50 g/ton of feed	Swine: For increased rate of weight and improved feed efficiency	
10 mg/lb of body weight daily	Swine: For treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin.	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter.
10 mg/lb of body weight daily	Breeding swine: For control and treatment of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to oxytetracycline.	Feed continuously for not more than 14 d; withdraw 5 d before slaughter.

TABLE 5.—DESI FINDINGS OF EFFECTIVENESS FOR USE OF OXYTETRACYCLINE AND NEOMYCIN ADMINISTERED IN CATTLE AND SHEEP FEED IN A 1:1 RATIO

Oxytetracycline and neomycin amount	Indications for use	Limitations
10 to 20 g/ton of feed	Sheep: For increased rate of weight gain and improved feed efficiency.	
0.05 to 0.1 mg/lb of body weight daily	Calves (up to 250 lb): For increased rate of weight gain and improved feed efficiency.	Feed continuously; in milk replacers or starter feed.
10 mg/lb of body weight daily	Calves and beef and nonlactating dairy cattle: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin.	Feed continuously for 7 to 14 d in feed or milk replacers. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older. Withdraw 5 d before slaughter.
10 mg/lb of body weight daily	Calves (up to 250 lb): For the treatment of bacterial enteritis caused by *E. coli* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin.	Feed continuously for 7 to 14 d in milk replacers or starter feed. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older. Withdraw 5 d before slaughter.
10 mg/lb of body weight daily	Sheep: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin.	Feed continuously for 7 to 14 d. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. Withdraw 5 d before slaughter.
25 mg/head/d	Calves (250 to 400 lb): For increased rate of weight gain and improved feed efficiency.	
75 mg/head/d	Growing cattle (over 400 lb): For increased rate of weight gain, improved feed efficiency, and reduction of liver condemnation due to liver abscesses.	
0.5 to 2.0 g/head/d	Cattle: For prevention and treatment of the early stages of shipping fever complex.	Feed 3 to 5 d before and after arrival in feedlots. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older.

C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin

The agency is making findings of effectiveness for combination drug Type B and Type C medicated feeds containing nicarbazin. These findings cover the following drugs:

• NADA 98–371, for the combination use of NICARBAZIN (nicarbazin), PENICILLIN G PROCAINE (procaine penicillin), and 3–NITRO (roxarsone). Phibro Animal Health.

• NADA 98–374, for the combination use of NICARBAZIN (nicarbazin) and PENICILLIN G PROCAINE (procaine penicillin). Phibro Animal Health.

• NADA 100–853, for the combination use of NICARBAZIN (nicarbazin), BACIFERM (BMD), and 3–NITRO (roxarsone). Phibro Animal Health.

These three combination drugs are for uses listed in § 558.15(g)(2). The drug sponsor information in the listing is outdated, designating The Upjohn Co. instead of Phibro Animal Health. In addition, rather than itemizing the indications for use, the listing gives references to the indications itemized in §§ 558.325, 558.355, and 558.530. These references are not accurate since they are for lincomycin, monensin, and roxarsone.

While NAS/NRC did not evaluate the efficacy data relating to these combinations, FDA has conducted such a review. This review was based on the agency's findings of effectiveness for bacitracin zinc, nicarbazin, procaine penicillin, and roxarsone single-ingredient feed use products, which in turn were based on NAS/NRC's evaluation (see 35 FR 12490, August 5, 1970 (bacitracin zinc); 34 FR 6495, April 15, 1969 (nicarbazin); 35 FR 11534, July 17, 1970 (procaine penicillin); and 35 FR 14273, September 10, 1970 (roxarsone)). FDA has determined that its previous findings of effectiveness are applicable to the combinations in the absence of information indicating interference in effectiveness between individual ingredients. Table 6 of this

document summarizes FDA's findings of effectiveness for certain combination drug Type B and Type C medicated feeds containing nicarbazin.

TABLE 6.—FINDINGS OF EFFECTIVENESS FOR USE OF CERTAIN DRUG COMBINATIONS CONTAINING NICARBAZIN IN POULTRY FEED

Type A article in g/ton	Type A article in g/ton	Type A article in g/ton	Indications for use	Limitations
Nicarbazin 90.8 to 181.6 (0.01 to 0.02 percent (pct)	Bacitracin methylene disalicylate 4 to 50	Roxarsone 22.7 to 45.4	Growing chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. As a sole source of organic arsenic; drug overdose or lack of water may result in leg weakness. Do not use in flushing mashes. Do not feed to laying hens in production. Discontinue medication 5 d before marketing the birds for human consumption to allow for elimination of the drug from edible tissue.
Nicarbazin 90.8 to 181.6 (0.01 to 0.02 pct)	Procaine penicillin 2.4 to 50		Growing chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to chickens producing eggs for human consumption. Discontinue medication 4 d before marketing the birds for human consumption to allow for elimination of the drug from edible tissue.
Nicarbazin 90.8 to 181.6 (0.01 to 0.02 pct)	Procaine penicillin 2.4 to 50	Roxarsone 22.7 to 45.4	Growing chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. As a sole source of organic arsenic; drug overdose or lack of water may result in leg weakness. Do not use in flushing mashes. Do not feed to chickens producing eggs for human consumption. Discontinue medication 5 d before marketing the birds for human consumption to allow for elimination of the drug from edible tissue.

D. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Bacitracin

The agency is making findings of effectiveness for combination drug Type B and Type C medicated feeds containing bacitracin. These findings cover the following drugs:

- NADA 141–130, for the combination use of BMD and zoalene. Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
- NADA 141–131, for the combination use of BMD, zoalene, and roxarsone. Alpharma, Inc.
- NADA 141–132, for the combination use of zinc bacitracin and nitarsone. Alpharma, Inc.

These three combination drugs are for uses listed in § 558.15(g)(2). The drug sponsor information in the listing is outdated, designating A. L. Laboratories, Inc., instead of Alpharma, Inc.

While NAS/NRC did not evaluate the efficacy data relating to these combinations, FDA has conducted such a review. This review was based on the agency's findings of effectiveness for BMD, bacitracin zinc, nitarsone, roxarsone, and zoalene single-ingredient feed use products. Most of these were based on NAS/NRC's evaluation (see 35 FR 11531, July 17, 1970 (BMD); 35 FR 12490, August 5, 1970 (bacitracin zinc); 34 FR 6494, April 15, 1969 (nitarsone); and 35 FR 14273, September 10, 1970 (roxarsone)). The effectiveness of zoalene in these combinations was based on FDA's review of a food additive petition containing effectiveness data (see 27 FR 11546, November 24, 1962). FDA has determined that its previous findings of effectiveness are applicable to the combinations in the absence of information indicating interference in effectiveness between individual ingredients. Table 7 of this document summarizes FDA's findings of effectiveness for certain combination drug Type B and Type C medicated feeds containing bacitracin.

TABLE 7.—FINDINGS OF EFFECTIVENESS FOR USE OF CERTAIN DRUG COMBINATIONS CONTAINING BACITRACIN IN POULTRY FEED

Type A article in g/ton	Type A article in g/ton	Type A article in g/ton	Indications for use	Limitations
Bacitracin 4 to 50	Zoalene 36.3 to 113.5.		Replacement chickens: For increased rate of weight gain and improved feed efficiency; and for development of active immunity to coccidiosis.	As bacitracin methylene disalicylate. Grower ration not to be fed to birds over 14 weeks of age; feed as in § 558.680(d)(1)(i).
Bacitracin 4 to 50	Zoalene 36.3 to 113.5.	Roxarsone 22.7 to 45.4	Replacement chickens: For increased rate of weight gain and improved feed efficiency; for development of active immunity to coccidiosis; and for improved pigmentation.	As bacitracin methylene disalicylate; discontinue use 5 d before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness. Grower ration not to be fed to birds over 14 weeks of age; feed as in § 558.680(d)(1)(i).
Bacitracin 4 to 50	Nitarsone 170 (0.01875 pct)		Growing turkeys: For increased rate of weight gain and improved feed efficiency; and as an aid in the prevention of blackhead.	As bacitracin zinc; discontinue use 5 d before slaughter. Early medication is essential to prevent spread of disease. Adequate drinking water must be provided near feeder at all times. The drug is not effective in preventing blackhead in birds infected more than 4 or 5 d. The drug is dangerous for ducks, geese, and dogs. Overdosage or lack of water may result in leg weakness or paralysis. Use as sole source of arsenic.

E. Applicability of Findings of Effectiveness

The findings of effectiveness as described previously in this document are concerned only with a drug's effectiveness for the stated conditions in the treated animals. Nothing in this document constitutes a bar to further proceedings with respect to questions of the safety of the subject drugs in treated animals or of the drugs or their metabolites in food products derived from treated animals.

F. Applicability of Pending Notices of Opportunity for Hearing

In the **Federal Registers** of August 30, 1977 (42 FR 43772), and October 21, 1977 (42 FR 56264), the Director of the Center for Veterinary Medicine (CVM) issued notices of opportunity for

hearing (NOOHs) on proposals to withdraw approval of NADAs for all penicillin-containing premix products intended for use in animal feed and for certain subtherapeutic uses of tetracyclines (chlortetracycline and oxytetracycline) in animal feed. Some of these products are listed in § 558.15. These NOOHs are still pending and nothing in this document constitutes a bar to subsequent action to withdraw approval on the grounds cited in the outstanding NOOHs.

G. Marketing

Marketing of the products that are the subject of this document, and which are approved, may be continued, provided that, on or before (see **DATES**), the holder of the application submits a signed Form FDA 356v *New Animal Drug Application* and complete product labeling (including specimen labeling for Type B and Type C medicated feeds) conforming to the applicable findings of effectiveness.

Supplemental NADAs that are filed in response to this document and comply with the requirements set forth will be approved, and documents will be published in the **Federal Register** amending the approval regulations in accordance with the approval and identifying the sponsor under section 512(i) of the act.

III. Notice of Opportunity for Hearing

On the basis of all available data and information, the Director of CVM is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 512 of the act that demonstrates effectiveness of the drugs listed in section II of this document, for their labeled indications of use other than the effective claims as stated in this document.

Therefore, notice is given to the sponsors of the NADAs for the nine animal drug products or combination uses described in section II of this document, and to all other interested persons, that the Director of CVM proposes to issue an order under section 512(e) of the act withdrawing approval of the NADAs providing for any claims other than those classified in this document as effective. The ground for the proposed withdrawal is that new information about the drug products, such as that provided by the NAS/NRC reviews, evaluated together with the evidence available at the time of approval, show there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application supplemented in accordance with this document to delete any indication for use lacking substantial evidence of effectiveness.

This notice of opportunity for hearing encompasses, in addition to the ground for the proposed withdrawal of the approvals, all issues relating to the legal status of the drug products subject to it, e.g., any contention that any such product is not a new animal drug within the meaning of section 201(w) of the act (21 U.S.C. 321(w)).

In accordance with section 512 of the act and part 514 (21 CFR part 514) and under the authority delegated to the Director of CVM (21 CFR 5.502), a sponsor and all other persons subject to this document are hereby given an opportunity for hearing to show why approval of the applications should not be withdrawn.

A sponsor or any other person subject to this document who wishes to request a hearing must file: (1) On or before (see **DATES**), a written notice of appearance and request for a hearing, and (2) on or before (see **DATES**), the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact to justify a hearing as specified in § 514.200. Any other interested person may also submit comments on this document. Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for a hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing, are contained in § 514.200 and 21 CFR part 12.

The failure of a holder of an approval, or any other party subject to this document, to file a timely written appearance and request for hearing as required by § 514.200 constitutes an election not to avail itself of the opportunity for hearing and a waiver of any contentions concerning the legal status of any such drug product, and the Director of CVM will summarily enter a final order withdrawing the approval. Any such drug product labeled other than for the effective claims identified in this document may not thereafter be marketed lawfully, and FDA will initiate appropriate regulatory action to remove any such drug product from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests a hearing, making findings and conclusions, and denying a hearing.

If a hearing is requested and is justified by the sponsor's response to this notice of opportunity for hearing, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will commence will be issued as soon as practicable.

All submissions under this document must be filed in four copies. Except for data and information prohibited from public disclosure by law, the submissions may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m. Monday through Friday. This document is issued under section 512 of the act and under the authority delegated to the Director of CVM (21 CFR 5.502).

IV. Environmental Impact

The agency has determined under 21 CFR 25.33(g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

The collections of information requirements for this document are covered under OMB control numbers 0910–0032 and 0910–0184.

Dated: August 1, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–20241 Filed 8–5–03; 4:09 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications (Catalog of Federal Domestic Assistance No. 93.103)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing changes to its Office of Orphan Products Development (OPD) grant program for fiscal years (FY) 2004 and 2005. This announcement supercedes the previous announcement of this program, which was published in the **Federal Register** of August 27, 2002 (67 FR 55020).

DATES: For FY 2004, the application receipt date is October 13, 2003. For FY 2005, the application receipt dates are April 7, 2004, and October 6, 2004.

ADDRESSES: Application requests and completed applications should be submitted to Maura Stephanos, Grants Management Officer, Grants and Assistance Agreements, Division of Contracts and Grants Management (HFA–531), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183, e-mail: *mstepha1@oc.fda.gov*. Applications that are hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.[1] Applications may also be obtained from the OPD on the Internet at *http://www.fda.gov/orphan* or *http://grants.nih.gov/grants/funding/phs398/phs398.html*.[2]

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management issues of this notice: Maura Stephanos (see **ADDRESSES**).

Regarding the programmatic issues of this notice: Debra Y. Lewis, Director, Orphan Products Grants Program, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6A–55, Rockville, MD 20857, 301–827–3666, e-mail: *dlewis@oc.fda.gov*.

[1] Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH).

[2] FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Except for applications for studies of medical foods that do not need premarket approval, FDA will only award grants to support premarket clinical studies to determine whether the products are safe and effective for approval under section 301 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331 *et seq*.) or under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262).

FDA will support the clinical studies covered by this notice under the authority of section 301 of the PHS Act. FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

Applicants for Public Health Service (PHS) clinical research grants are encouraged to include minorities and women in study populations so research findings can be of benefit to all people at risk of the disease or condition under study. It is recommended that applicants place special emphasis on including minorities and women in studies of diseases, disorders, and conditions that disproportionately affect them. This policy applies to research subjects of all ages. If women or minorities are excluded or poorly represented in clinical research, the applicant should provide a clear and compelling rationale that shows inclusion is inappropriate.

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, vols. I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at *http://www.healthypeople.gov/*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) Internet viewers should proceed to ''Publications.''

I. Program Research Goals

The OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (that is, one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is fewer than 200,000 people a year.

The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the product will improve the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's ''Background and Significance'' section an explanation of how the proposed study will either help gain product approval or provide essential data needed for product development. All funded studies are subject to the requirements of the act and regulations issued under it.

II. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The NIH modular grant program does not apply to this FDA grant program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS Act (42 U.S.C. 262), and regulations issued under any of these sections.

B. Award Amount

Of the estimated FY 2004 funding ($13.2 million), approximately $9.2 million will fund noncompeting continuation awards, and approximately $4 million will fund 10 to 12 new awards. The expected start date for the FY 2004 awards will be April 1, 2004. The estimated FY 2005 funding is anticipated to be the same as FY 2004. The expected start date for the FY 2005 awards will begin January 1, 2005.

All applications received for the October 13, 2003, due date that are

recommended for approval but not funded using FY 2004 funds will remain in competition for FY 2005 funds along with those applications received for the April 7, 2004, and October 6, 2004, due dates. Applications submitted for the first due date may be withdrawn and resubmitted for the second due date.

Grants will be awarded for $150,000 or $300,000 in direct costs a year, plus applicable indirect costs, for up to 3 years. Applications for the smaller grants ($150,000) may be for phase 1, 2, or 3 studies. Study proposals for the larger grants ($300,000) must be for studies continuing in phase 2 or phase 3 of investigation. Phase 1 studies include the initial introduction of an investigational new drug or device into humans, are usually conducted in healthy volunteer subjects, and are designed to determine the metabolic and pharmacological actions of the product in humans, the side effects including those associated with increasing drug doses and, if possible, to gain early evidence on effectiveness. Phase 2 studies include early controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patient's with the disease or condition and to determine the common short-term side effects and risks associated with it. Phase 3 studies gather more information about effectiveness and safety that is necessary to evaluate the overall risk-benefit ratio of the product and to provide an acceptable basis for product labeling. Budgets for each year of requested support may not exceed the $150,000 or $300,000 direct cost limit, whichever is applicable.

C. Eligibility

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards.

D. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year, (2) compliance with regulatory requirements of the investigational new drug (IND)/investigational device exemption (IDE), and (3) availability of Federal funds.

E. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Resources for this program are limited. Therefore, if two applications propose duplicative or similar studies, FDA may support only the study with the better score. Funds may be requested in the budget to travel to FDA for meetings with OPD or reviewing division staff about the progress of product development.

Before an award will be made, the OPD will confirm the active status of the protocol under the IND/IDE. If the protocol is under FDA clinical hold for any reason or if the IND/IDE for the proposed study is not active and in regulatory compliance, no award will be made. Documentation of assurances with the Office of Human Research Protection (OHRP) (see section III.A of this document) should be on file with the FDA grants management office before an award is made. In order to avoid funding studies that may not receive or may experience a delay in receiving institutional review board (IRB) approval, documentation of IRB approval for all performance sites must be on file with the FDA grants management office before an award to fund the study will be made. In addition, if a grant is awarded, grantees will be informed of any additional documentation that should be submitted to FDA's IRB. This grant program does not require the applicant to match or share in the project costs if an award is made.

F. Dun and Bradstreet Number (DUNS)

Beginning October 1, 2003, applicants will be required to have a DUNS number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

III. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

All institutions engaged in human subject research supported by the Department of Health and Human Services (DHHS) must file an ''assurance'' of protection for human subjects with the OHRP (45 CFR part 46). Applicants are advised to visit the OHRP Internet site at *http://ohrp.osophs.dhhs.gov/* (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**) for guidance on human subjects issues. The requirement to file an assurance applies to both ''awardee'' and collaborating ''performance site'' institutions. Awardee institutions are automatically considered to be engaged in human subject research whenever they receive a direct DHHS award to support such research, even where all activities involving human subjects are carried out by a subcontractor or collaborator. In such cases, the awardee institution bears the responsibility for protecting human subjects under the award. The awardee institution is also responsible for, among other things, ensuring that all collaborating performance site institutions engaged in the research hold an approved assurance prior to their initiation of the research. No awardee or performance site institution may spend funds on human subject research or enroll subjects without the approved and applicable assurance(s) on file with OHRP.

Applicants should review the section on human subjects in the application instructions entitled ''I. Preparing Your Application, Section C. Specific Instructions, Item 4, Human Subjects'' for further information.

The clinical protocol should comply with ICHE6 ''Good Clinical Practice Consolidated Guidance'' which states an international ethical and scientific quality standard for designing, conducting, recording, and reporting trials that involve the participation of human subjects. Applicants are encouraged to review the regulations, guidances and information sheets on Good Clinical Practice cited on the Internet at *http://www.fda.gov/oc/gcp/*.

B. Key Personnel Human Subject Protection Education

The awardee institution is responsible for ensuring that all key personnel receive appropriate training in their human subject protection responsibilities. Key personnel include all principal investigators, coinvestigators, and performance site investigators responsible for the design and conduct of the study. Neither DHHS, FDA, nor OPD prescribes or endorses any specific education programs. Many institutions have already developed educational programs

on the protection of research subjects and have made participation in such programs a requirement for their investigators. Other sources of appropriate instruction might include the online tutorials offered by the Office of Human Subjects Research, NIH at *http://ohsr.od.nih.gov/*[3] and by OHRP at *http://ohrp.osophs.dhhs.gov/educmat.htm*.[4] Also, the University of Rochester has made available its training program for individual investigators. Its manual can be obtained through Centerwatch, Inc., at *http://www.centerwatch.com*.[5] Within 30 days of the award, the principal investigator should provide a letter to the FDA grants management office which includes the names of the key personnel, the title of the human subjects protection education program completed by each named personnel, and a one-sentence description of the program. This letter should be signed by the principal investigator and co-signed by an institution official and sent to the Grants Management Officer.

C. Informed Consent

Consent forms, assent forms, and any other information given to a subject are part of the grant application and must be provided, even if in a draft form. The applicant is referred to DHHS regulations at 45 CFR 46.116 and 21 CFR 50.25 for details regarding the required elements of informed consent.

IV. Review Procedures and Criteria

A. Review Procedures

FDA grants management and program staff will review all applications sent in response to this notice. To be responsive, an application must be submitted in accordance with sections II.B, II.C, IV.B, and V of this document, and must bear the original signatures of both the principal investigator and the applicant institution's/organization's authorized official. Applications found to be nonresponsive will be returned to the applicant without further consideration. Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting their application. Please direct all questions of a technical or scientific nature to the OPD program staff and all questions of an administrative or financial nature to the grants management staff (see **FOR FURTHER INFORMATION CONTACT**).

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Consultation with the proper FDA review division may also occur during this phase of the review to determine whether the proposed study will provide acceptable data that could contribute to product approval. Responsive applications will be subject to a second review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Program Review Criteria

1. Applications must propose clinical trials intended to provide safety and/or efficacy data of one therapy for one orphan indication.

2. There must be an explanation in the ''Background and Significance'' section of how the proposed study will either contribute to product approval or provide essential data needed for product development.

3. The prevalence, not incidence, of the population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the ''Background and Significance'' section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per year.

4. The study protocol proposed in the grant application must be under an active IND or IDE (not on clinical hold) to qualify the application for scientific and technical review. Additional IND/IDE information is described as follows:

- The proposed clinical protocol should be submitted to the FDA IND/IDE reviewing division a minimum of 30 days before the grant application deadline.
- The number assigned to the IND/IDE that includes the proposed study should appear on the face page of the application with the title of the project. The date the subject protocol was submitted to FDA for the IND/IDE review should also be provided.
- Protocols that would otherwise be eligible for an exemption from the IND regulations must be conducted under an active IND to be eligible for funding under this FDA grant program.
- If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor permitting access to the IND/IDE must be submitted. Both the principal investigator named in the application and the study protocol must have been submitted to the IND/IDE.
- Studies of already approved products, evaluating new orphan indications, are also subject to these IND/IDE requirements.
- Only medical foods that do not need premarket approval are free from these IND/IDE requirements.

5. The requested budget must be within the limits, either $150,000 in direct costs for each year for up to 3 years for any phase study, or $300,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies. Any application received that requests support over the maximum amount allowable for that particular study will be considered nonresponsive.

6. Evidence that the product to be studied is available to the applicant in the form and quantity needed for the clinical trial must be included in the application. A current letter from the supplier as an appendix will be acceptable.

7. The narrative portion of the application (excluding appendices) should be no more than 100 pp., single-spaced, printed on 1 side, with 1/2-inch margins, and in unreduced 12-point font. The application should not be bound.

C. Scientific/Technical Review Criteria

The ad hoc expert panel will review the application based on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study.

2. The quality and appropriateness of the study design, including the design of data and safety monitoring plans.

3. The statistical justification for the number of patients chosen for the study, based on the proposed outcome measures and the appropriateness of the statistical procedures for analysis of the results.

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe.

5. The qualifications of the investigator and support staff, and the resources available to them.

6. The adequacy of the justification for the request for financial support.

7. The adequacy of plans for complying with regulations for protection of human subjects.

8. The ability of the applicant to complete the proposed study within its budget and within time limits stated in this request for applications (RFA).

A score will be assigned based on the scientific/technical review criteria. The review panel may advise the program

[3,4,5] FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

staff about the appropriateness of the proposal to the goals of the OPD grant program described in section I of this document.

V. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments, with three copies of the appendices must be submitted to Maura Stephanos (see **ADDRESSES**). State and local governments may use the PHS 398 (Rev. 5/01) application form in lieu of the PHS 5161–1. Other than evidence of final IRB approval, no material will be accepted after the receipt date. The mailing package and item two of the application face page must be labeled ''Response to RFA–FDA–OPD–2004–1'' or ''RFA–FDA–OPD–2005–1,'' whichever is applicable. If an application for the same study was submitted in response to a previous RFA but has not yet been funded, an application in response to this notice will be considered a request to withdraw the previous application.

Also, if an application is submitted for the October 13, 2003, due date and is not funded, and an application for the same study is then resubmitted for either the April 7, 2004, or October 6, 2004, due dates for FY 2005 funding, the original, unfunded application will be administratively withdrawn. Resubmissions are treated as new applications; therefore, the applicant for a resubmitted application must address the issues presented in the summary statement from the previous review, and include a copy of the summary statement itself as part of the resubmitted application. Applicants must follow guidelines named in the PHS 398 (Rev. 5/01) grant application instructions.

VI. Method of Application

A. Submission Instructions

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday until the established receipt dates. Applications will be considered received on time if hand delivered to the address noted previously before the established receipt dates or sent or mailed by the receipt date as shown by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office). Please do not send applications to the CSR at NIH. Any application sent to NIH that is forwarded to FDA and received after the applicable due date will be judged nonresponsive and returned to the applicant. Applications must be submitted via U.S. mail or commercial carrier or hand delivered as stated previously. Currently, FDA is unable to receive applications electronically.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/01). Applications from State and local governments may be sent on Form PHS 5161–1 (Rev. 7/00) or Form PHS 398 (Rev. 5/01). All ''General Instructions'' and ''Specific Instructions'' in the application kit or on the OPD Web site (see **ADDRESSES**) must be followed except for the receipt dates and the mailing label address. The face page of the application must reflect the request for applications number RFA-FDA-OPD–2004–1 or RFA-FDA-OPD–2005–1, whichever is applicable. The title of the proposed study must include the name of the product and the disease/disorder to be studied and the IND/IDE number. The remaining portion of the application may not exceed 100 pp. in length and must be single-spaced, printed on 1 side, in 12-point font, and unbound.

Applicants have the option of omitting from the application copies (but not from the original) specific salary rates or amounts for individuals specified in the application budget and Social Security numbers if otherwise required for individuals. The copies may include summary salary information.

Applicants should provide as an appendix to the application a summary of any meetings or discussions about the clinical study that have occurred with FDA reviewing division staff.

Data and information included in the application will generally not be publicly available prior to the funding of the application. After funding has been granted, data and information included in the application will be given confidential treatment to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (including inter alia 21 CFR 20.61).

Information collection requirements requested on Form PHS 398 (Rev. 5/01) have been sent by the PHS to the Office of Management and Budget (OMB) and have been approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 (Rev. 7/00) were approved and assigned OMB control number 0348–0043.

VII. Reporting Requirements and Monitoring Activities

The original and two copies of the annual Financial Status Report (FSR) (SF–269) must be sent to FDA's grants management officer within 90 days of the budget period end date of the grant. For continuing grants, an annual program progress report is also required. For such grants, the noncompeting continuation application (PHS 2590) will be considered the annual program progress report. Also, all new and continuing grants must comply with all regulatory requirements necessary to keep active status of their IND/IDE. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

The program project officer will monitor grantees quarterly and will prepare written reports. The monitoring may be in the form of telephone conversations or e-mails between the project officer/grants management officer and the principal investigator. Periodic site visits with officials of the grantee organization may also occur. The results of these monitoring activities will be recorded in the official grant file and will be available to the grantee upon request consistent with applicable disclosure statutes and with FDA disclosure regulations. Also, the grantee organization must comply with all special terms and conditions of the grant, including those which state that future funding of the study will depend on recommendations from the OPD project officer. The scope of the recommendations will confirm that: (1) There has been acceptable progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial.

The grantee must file a final program progress report, FSR and invention statement within 90 days after the end date of the project period as noted on the notice of grant award.

VIII. Clinical Trials Data Bank

The Food and Drug Modernization Act of 1997 requires studies of drugs for serious or life-threatening diseases conducted under FDA's IND regulations to be entered into the Clinical Trials Data Bank (CTDB).

This databank provides patients, family members, healthcare providers, researchers, and members of the public easy access to information on clinical trials for a wide range of diseases and conditions. The U.S. National Library of Medicine has developed this site in collaboration with NIH and FDA. The databank is available to the public through the Internet at *http://clinicaltrials.gov*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The CTDB contains: (1) Information about clinical trials, both federally and privately funded, of experimental treatments for patients with serious or life-threatening diseases; (2) a description of the purpose of each experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) point of contact for those wanting to enroll in the trial.

All applications that are funded through the OPD grant program are required to enter into the CTDB information about the study being funded. The OPD program staff will provide more information to grantees about entering the required information in the CTDB after awards are made.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20198 Filed 8–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Dates and Times:
September 7, 2003, 5 p.m.–8 p.m.
September 8, 2003, 8:30 a.m.–5:30 p.m.
September 9, 2003, 8:30 a.m.–4 p.m.

Place: The Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on cultural competency and diversity for the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will focus on how cultural competency and diversity relate to health status outcomes. The following topics could be addressed at the meeting: Does cultural competency impact on health status outcomes; How do Titles VII and VIII programs address cultural competency; and What measures of health outcomes are critical to linking effectiveness of cultural competency to Titles VII and VIII programs.

Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted before lunch and at the end of the Committee meeting on September 8, 2003. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Washington Terrace Hotel, Washington, DC, on September 8, 2003. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: August 1, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–20249 Filed 8–7–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, National Research Service Award.

Date: September 21–23, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301/435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health; HHS)

Dated: August 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20297 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The other and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the other, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Training and Career Development Subcommittee.

Date: September 11, 2003.

Open: 8 a.m. to 9:30 a.m.

Agenda: To discuss subcommittee business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd, Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Strategic Plan Development Subcommittee.

Date: September 11, 2003.

Open: 8 a.m. to 9:30 a.m.

Agenda: To discuss subcommittee business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 11, 2003.

Open: 10 a.m. to 2:30 p.m.

Agenda: The meeting will include a report from the NIBIB Director and reports from the Council's two subcommittees.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd, Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: August 1, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20293 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Embryonic Stem Cells.

Date: September 16, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gateway Bldg., 7201 Wisconsin Ave., 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: August 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20295 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Heart.

Date: September 3, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Ave, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, the Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20296 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee, Workgroup.

Date: September 22–23, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review process.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Room 6087, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1114.

Information is also available on the Institute's/Center's home page: *http://www.csr.nih.gov/drgac/drgac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20294 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prostate Cancer Immunotherapy.

Date: August 13, 2003.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Genetics.

Date: August 15, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7848, Bethesda, MD 20892, (301) 435–1150, *politisa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20298 Filed 8–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Nominations for Listing in the 11th Edition of the Report on Carcinogens

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (''the NTP RoC Subcommittee'') to be held on October 14–15, 2003, at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005. On October 14, registration will begin at 9 a.m. and the meeting will begin at 9:30 a.m. On October 15, the meeting will begin at 8:30 a.m. Pre-registration is not required; however, persons requesting time to make oral public comments are asked to notify Dr. Mary S. Wolfe, NTP Executive Secretary, prior to the meeting (contact information given below). The agenda covers the peer review of seven nominations for possible listing in the 11th Edition of the Report on Carcinogens (''the 11th RoC''), and includes an opportunity for public input.

Agenda

The meeting of the NTP RoC Subcommittee is scheduled for October 14–15, 2003 and is open to the public with attendance limited to only the available space. Tentatively scheduled for peer review are seven nominations for possible listing in the 11th RoC. These nominations are listed alphabetically in the attached table, along with supporting information and a tentative order of presentation and review. Background documents for each of the nominations have been made available previously to the public on the web and include a summary of the scientific data and information being used to evaluate the nomination. A copy of the background document for each of these nominations is available electronically through the NTP's RoC web site for the 11th RoC at *http://ntp-server.niehs.nih.gov/Newhomeroc/11RoCBkgrnd.html* (select Nominations Under Review in 2003) or can be obtained on CD or in hard copy, as available, from: Dr. C.W. Jameson, Report on Carcinogens, NIEHS, MD EC–14, 79 T.W. Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–4096; FAX 919/541–2242; email *jameson@niehs.nih.gov*).

The agenda and a roster of NTP RoC Subcommittee members will be available prior to the meeting on the NTP homepage at *http://ntp-server.niehs.nih.gov/* or upon request from Dr. Wolfe. Following the meeting, summary minutes will also be available electronically at *http://ntp-server.niehs.nih.gov/NewHomeRoc/mtgs.html* and in hardcopy upon request from Dr. Wolfe.

A total of 17 nominations are under consideration for the 11th RoC. Previous notices in the **Federal Register** (July 24, 2001: Volume 66, Number 142, Pages 38430–38432 and March 28, 2002: Volume 67, Number 60, Page 14957) announced the nominations to be reviewed for possible listing in the 11th RoC. This review by the NTP RoC Subcommittee is for the second set of seven nominations identified in those **Federal Register** announcements that have completed review by the NIEHS Review Committee for the Report on

Carcinogens (RG1) and the NTP Executive Committee Interagency Working Group for the Report on Carcinogens (RG2). The RoC Subcommittee reviewed the first 10 nominations to the 11th RoC at a public meeting on November 19–20, 2002, in Washington, DC. Summary minutes of that meeting are available electronically at *http://ntp-server.niehs.nih.gov/NewHomeRoc/mtgs.html* or in hardcopy upon request to the Executive Secretary (contact information below).

Solicitation of Public Comment

This meeting of the NTP RoC Subcommittee is open to the public, and time will be provided for oral public comment on each of the nominations under review. In order to facilitate planning, persons requesting time for an oral presentation on a nomination should notify the Executive Secretary, (Dr. Mary S. Wolfe, P.O. Box 12233, A3–07, Research Triangle Park, NC 27709; telephone 919/541–3971; FAX 919/541–0295; e-mail *wolfe@niehs.nih.gov*) no later than September 29, 2003. Each organization is allowed one time slot for an oral presentation per nomination. Persons registering to make comments are asked to provide, if possible, a written copy of their statement by September 29 so copies can be made and distributed to NTP RoC Subcommittee members for their timely review prior to the meeting. Written statements can supplement and expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Individuals who register to make oral presentations by September 29 will be notified about the time available for their presentation at least one week prior to the meeting. Registration for making public comments will also be available on-site. Time allowed for presentation by on-site registrants may be less than that for preregistered speakers and will be determined by the number of speakers who register at the meeting to give comments. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 25 copies of the text. These copies will be distributed to the NTP RoC Subcommittee members and supplement the record. All comments received in response to this **Federal Register** notice will be posted on the NTP RoC web site.

Written comments, in lieu of making oral comments, are welcome. All comments must include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and should be received by September 29, 2003, for distribution to the NTP RoC Subcommittee. Written comments received after September 29 will not be considered by NTP RoC Subcommittee members in their reviews.

Solicitation of Additional Information

The NTP would welcome receiving information from completed human or experimental animal cancer studies or studies of mechanism of cancer formation, as well as current production data, human exposure information, and use patterns for any of the nominations listed in this announcement. Organizations or individuals that wish to provide information should contact Dr. C.W. Jameson at the address given above.

Background

The Department of Health and Human Services (DHHS) Report on Carcinogens is a public information document prepared for the U.S. Congress by the National Toxicology Program (NTP) in response to Section 301(b)(4) of the Public Health Service Act, as amended. The intent of the document is to provide a listing of those agents, substances, mixtures or exposure circumstances that are either ''known'' or ''reasonably anticipated'' to cause cancer in humans and to which a significant number of people in the United States are exposed. The process for preparation of the RoC has three levels of scientific review. Central to the evaluations of the review groups is the use of criteria for inclusion in or removal of listings from the report. The current criteria for listing in or delisting from the Report is available on the Web at the following web site: *http://ntp-server.niehs.nih.gov/NewHomeRoc/ListingCriteria.html*, or can be obtained in hard copy by contacting Dr. C.W. Jameson at the address listed above. The review process for listing in or delisting from the RoC begins with initial scientific review by the National Institute of Environmental Health Sciences (NIEHS)/NTP Report on Carcinogens Review Committee (RG1), which is comprised of NIEHS/NTP staff scientists. The second scientific review group (RG2) is comprised of representatives from the Federal health research and regulatory agencies that are members of the NTP Executive Committee. The third step is external scientific review at a public meeting by the NTP RoC Subcommittee. Following completion of these reviews and solicitation of public comments through announcements in the **Federal Register** and other media, the independent recommendations of the three scientific review groups and all public comments are presented to the NTP Executive Committee for review and comment. All recommendations and public comments are submitted to the Director, NTP, who reviews them and makes a final recommendation to the Secretary, DHHS, concerning the listing or delisting of substances or exposure circumstances in the RoC. The Secretary has final review and approval authority for the 11th RoC.

Dated: July 30, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

SUMMARY DATA FOR NOMINATIONS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS REPORT ON CARCINOGENS SUBCOMMITTEE

[October 14–15, 2003]

Nomination to be reviewed/ CAS number	Primary uses or exposures	To be reviewed for	Tentative review order
Diazoaminobenzene (DAAB)/136–35–6.	DAAB is used as an intermediate in the production of dyes, and as a complexing agent, polymer additive and to promote adhesion of natural rubber to steel.	Listing in the 11th RoC	6
Hepatitis B Virus (HBV)	HBV is a small DNA-enveloped virus that along with Hepatitis C Virus causes most parenterally transmitted viral hepatitis.	Listing in the 11th RoC	4
Hepatitis C Virus (HCV)	HCV is an RNA-enveloped virus that along with Hepatitis B Virus causes most parenterally transmitted viral hepatitis.	Listing in the 11th RoC	5

SUMMARY DATA FOR NOMINATIONS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS REPORT ON CARCINOGENS SUBCOMMITTEE—Continued

[October 14–15, 2003]

Nomination to be reviewed/ CAS number	Primary uses or exposures	To be reviewed for	Tentative review order
Human Papillomaviruses (HPVs), Genital-Mucosal Types.	HPVs are small, non-enveloped viruses that infect oral and genital mucosa. HPV infections are common throughout the world.	Listing in the 11th RoC	3
Lead and Lead Compounds	Major use of metal is in making lead-acid storage batteries. Other common uses include ammunition and cable covering. Lead compounds are used in paint, glass, ceramics, fuel additives, and some traditional cosmetics.	Listing in the 11th RoC	2
Neutrons	Exposure to neutrons normally occurs from a mixed irradiation field in which neutrons are a minor component. The exceptions are exposure of patients to neutron radiotherapy beams and exposures of aircraft passengers and crew.	Listing in the 11th RoC	*1
X-Radiation and GAMMA Radiation.	Exposure to these forms of ionizing radiation comes from a variety of natural (environmental exposure) and anthropogenic sources, including exposure for military, medical, and occupational purposes.	Listing in the 11th RoC	**1

* Note—will be reviewed together with X-Radiation and GAMMA Radiation nomination.
** Note—will be reviewed together with Neutrons nomination.

[FR Doc. 03–20299 Filed 8–7–03; 8:45 am]
BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Technical Assistance to ORR-Funded Refugee Programs and Services for Asylees

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of availability of FY 2003 discretionary funds for technical assistance in seven categories of programs that assist refugees and one grant for services for asylees.

CFDA Number: The Catalog of Federal Domestic Assistance number for this program is 93.576.

SUMMARY: ORR invites eligible entities to submit competitive applications for cooperative agreements to provide technical assistance to agencies that serve in the following first seven program areas. For Program Area 8, ORR invites eligible applicants to submit applications for a grant to provide services via a Multilingual Information, Referral, and Registration Hotline.

Program Area 1—Technical Assistance for refugee-based Mutual Aid Associations (MAAs), Voluntary Agencies assisting or working with refugee community organizations and other program areas that the Director of ORR may consider as appropriate response to emerging refugee resettlement needs;

Program Area 2—Technical Assistance for Employment Services;

Program Area 3—Technical Assistance for English Language Training and Service Programs;

Program Area 4—Technical Assistance for Refugee Economic Development Activities/Programs;

Program Area 5—Technical Assistance to Enhance Child Welfare Services for Refugee Communities;

Program Area 6—Technical Assistance to Promote Refugee Housing Opportunities;

Program Area 7—Technical Assistance for Crime Prevention Programs; and

Program Area 8—Services for Asylees to be provided via a Multilingual Information, Referral and Registration Hotline.

Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

Applications will be accepted pursuant to the ORR Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522), as amended.

DATES: The closing date for submission of applications is September 8, 2003. Applications received 30 days after the publication date are considered to be late. See Part IV of this announcement for more information on submitting applications.

Announcement Availability: The program announcement and the application materials are available from Mitiku Ashebir, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW., 8th Fl., Washington, DC 20447 and from ORR Web site at *http://www.acf.hhs.gov/programs/orr.*

FOR FURTHER INFORMATION CONTACT: Mitiku Ashebir, Division of Community Resettlement (DCR), ORR, Administration for Children and Families (ACF), (202) 205–3602; fax (202) 401–0981; e-mail: *mashebir@acf.hhs.gov* or Daphne Weeden, Office of Grants Management (OGM), (ACF), (202) 401–4577; e-mail: *paqueries-OGM@acf.hhs.gov.*

Application Information: This program announcement consists of four parts:

Part I: Background—Legislative authority, funding availability, applicant eligibility, project and budget periods, length of application, and for each of the nine program areas: Purpose and scope, allowable activities, and review criteria.

Part II: General instructions for preparing a full project description.

Part III: The Review Process—Intergovernmental review, initial ACF screening and competitive review.

Part IV: Application Submission—Application materials, application development, application submission information, certifications, assurances and reporting.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information. Information collection is included in the following program announcement: OMB

control No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) attached as appendix A, which expires 12/31/03. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

In recent years, ORR has supported the work of its grantees and other agencies serving refugees in various program areas through several technical assistance grants with organizations uniquely qualified to advance the refugee service field, improve program achievement, develop organizational capacity, and improve overall performance. ORR has supported specific technical assistance for employment, English language training, microenterprise, Individual Development Account programs, housing, capacity development activities among emerging ethnic organizations, and services to children, the elderly and asylees. ORR's intent is to assist grantees to provide the best technical help for continuous improvement in refugee programs in the form of capacity building to adequately serve refugees, and to bring about positive development and impact on the lives of refugees and asylees.

Legislative Authority—This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522 (c)(1)(A)), as amended, authorizing the Director to make grants to, and enter into contracts with public or private non-profit agencies to achieve the following goals. The technical assistance projects and the services for asylees must be designed ''(i) to assist refugees in obtaining the skills that are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other re-certification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance) and (iii) to provide where specific needs have been shown and recognized by the Director, health, (including mental health) services, social services, educational, and other services.'' The Department of Health and Human Services Appropriations Act, 2003, title II of division G of the Consolidated Appropriation Resolution FY 2003, Public Law 108–7, appropriates funds for refugee and entrant assistance activities authorized by these provisions of the INA.

Funding Availability—ORR expects to make available approximately $3 million in social services discretionary funds in eight program areas, seven cooperative agreements and one grant. The award amount range is for planning purposes. Applications with requested amounts that exceed the upper value of the dollar range specified will still be considered for review. No matching or cost sharing by the applicant is required.

Applicant Eligibility—Eligible applicants for all program areas are public and private non-profit organizations. Faith-based and community organizations are eligible to apply for these funds. Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of articles of incorporation bearing the seal of the State in which the corporation or association is domiciled, or by providing a certified copy of the organizations certificate of incorporation or similar document that clearly establishes non-profit status, or any of the items above for a state or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private, non-profit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project and Budget Periods—This announcement invites applications for project periods for up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation of grants under these awards beyond the one-year budget period, but within the 3-year project period, will be entertained in subsequent years on a noncompetitive basis. Any continuation is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Length of Application: Applicants must limit program narratives to 25 pages per program area (double-spaced on standard, letter-size paper, in 12-point font) plus no more than 25 pages of appended material. This limitation of 25 pages per program area should be considered as a maximum, and not necessarily a goal.

Program Area 1—Technical Assistance in the Area of Organizational and Capacity Building for Refugee-Based Mutual Aid Associations (MAAs), Voluntary Agencies Assisting or Working With Refugee Community Organizations and Other Areas That the Director of ORR Considers an Appropriate Response to Emerging Refugee Resettlement Needs

Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award one cooperative agreement to assist in the development of a project to provide technical assistance to MAAs, faith-based and community organizations, and other entities assisting refugees. Through this award, ORR intends for this grantee to provide technical planning and assistance to MAA grantees, Voluntary Agencies and other refugee service providers working with refugee community organizations for multiple purposes: (1) To strengthen organizational capacity; (2) to acquire functional governance and organizational stability; and (3) to conduct appropriate personnel, program, and financial management by sharing proper organizational policies, structures, procedures, and materials through a grantee network. ORR envisions that the assistance in this category will improve services to refugees and enhance grantees' collaboration on performance measures in critical service areas that are designed to facilitate and promote refugee self-sufficiency and economic independence.

ORR's intent is also to equip technical assistance providers with the best technical help possible so that MAAs and other entities serving refugees can be better trained to address the social and economic developments that may impact on how well refugees progress in their resettlement in the U.S. Thus, ORR also intends to provide technical guidance to organizations serving refugees concerning emerging refugee issues in resettlement in an effort to promote continuous improvement in refugee programs. These areas will include projects to provide services to newly arrived refugees.

Approximately $500,000 has been allocated for this program area. ORR expects to award one cooperative agreement. The successful applicant will have demonstrated expertise in

organizational and community development activities along with experience and flexibility in being able to respond to such particular characteristics and needs of ethnic organizations and other service areas as may be determined by ORR. These needs may be manifested as functions of the organizational development processes or occur due to major internal and/or external changes that are recognized as critical to the proper functioning of community organizations.

Through this cooperative agreement, the grantee will submit a technical assistance plan for refugee-based MAAs, Voluntary Agencies assisting refugee community organizations and other program areas that the Director of ORR may consider as appropriate response to emerging refugee resettlement needs that includes at least the following: (1) Proposed site visits and corresponding technical assistance activities; (2) written materials developed and proposed for dissemination to the field; (3) proposed workshop locations, topics, presentation formats, and agendas; and (4) methods and approaches of identifying, documenting, presenting and addressing emerging refugee needs. ORR intends to review and approve the grantee's technical assistance plan in these areas and other activities proposed by the grantee in relation to the allowable activities listed below. ORR will also provide direction concerning any emerging refugee needs that should be addressed under this technical assistance.

Allowable Activities

Applicants may propose all or some combination of the following, as well as other innovative strategies justifying their usefulness for technical assistance in the designated technical assistance area:

—Assessing technical assistance and training needs in community organizations and other ORR grantees;
—Disseminating information, materials, and technical advice related to employment, community orientation, effective case management, program and financial management, and leadership development, and roles of boards, agency executives, and agency staff and organization members;
—Collecting and summarizing data and information on program performance;
—Facilitating the electronic exchange of information through a network website and listserve; and through the collection and reporting of program performance, performance measurement, and impact information;
—Providing on-site training or technical assistance group meetings and workshops;
—Developing training curricula, a resource handbook, and other resource materials as needed;
—Conducting on-site program reviews of MAA grantees and training workshops as needed and appropriate;
—Preparing and disseminating reports on the program characteristics and achievements;
—Maintaining a database of characteristics and achievements of the programs; and
—Identifying and disseminating potential resources, partnership opportunities, and community initiatives.
—Preparing adequate and appropriate responses to emerging refugee resettlement needs.

Review Criteria—MAAs and Emerging Refugee Resettlement Needs

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise, and experience in the provision of technical assistance and information sharing to assist small and emerging organizations, as well as relatively developed community organizations, is appropriate for the proposed project. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known technical assistance needs of refugee community-based organizations. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to ethnic and other organizations involved in refugee self-help organizing and support. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points).

Program Area 2—Technical Assistance for Employment Services

Purpose and Scope

The primary goal of refugee resettlement is to assist refugees in becoming self-sufficient. Two factors critical to achieving this goal are gainful attachment to the labor force and the opportunity to earn a living wage. ORR proposes to award one cooperative agreement to assist an agency in developing a project to provide technical assistance services to ORR employment service providers to increase the rate and improve the quality of employment outcomes and to address the special needs of emerging populations.

This announcement continues ORR's longstanding recognition that assistance should be provided to improve the technical assistance services that must be provided to refugee employment service providers. The technical assistance in this category aims to identify best models and practices, and broadly disseminate this information to assist local programs in implementing performance measures under the Government Performance and Results Act (GPRA). This objective can be achieved by developing and conducting training and on-site reviews and performing on-site analysis of employment services in such areas as staff training, multi-agency collaboration, employer and/or refugee involvement in the design of services, and in the organization and administration of job development and placement projects.

Approximately $300,000 has been allocated for this program area. One cooperative agreement may be awarded for one national project. Through this cooperative agreement, the grantee will submit a plan the following: (1) Proposed site visits and technical assistance activities and schedules; (2) plan for written materials developed prior to the release of such documents; and (3) proposed workshop schedules, locations, topics, presentation formats, and agendas. ORR intends to review and approve the grantee's plan for technical assistance in these areas and other activities proposed by the grantee in relation to the allowable activities listed below. ORR will also provide direction and feedback in critical refugee employment needs and corresponding technical assistance services.

Allowable Activities

Applicants may propose all or a combination of the activities described below, or new or innovative approaches justifying their usefulness to providing

technical assistance for employment services.
—Institution and implementation of on-site visits to assess technical assistance needs, to provide technical assistance and training directly to agencies, and to ascertain best practices in providing employment services resulting in living wages and employment benefits;
—Development of diverse reports to be distributed to agencies to assist them in providing employment services, including site visit reports and best practices reports;
—Organization and operation of workshops for agencies in the area of employment services, which include facilitated discussions, training, and presentations addressing a breadth of employment needs for newly emerging refugee populations, newly employed refugee groups, and skilled and professional refugees to the extent possible;
—Provision of technical assistance in writing, by e-mail and by telephone, to agencies; and
—Preparation and dissemination of reports on program characteristics and achievements.

Review Criteria—Employment Services

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance that is tuned to the changing dynamics of the job market and the changes in the characteristics of incoming refugee populations is well described and is appropriate and adequate for the proposed project. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address refugee employment technical assistance needs. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to agencies and groups involved in refugee employment. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 3—Technical Assistance to English Language Training Providers

Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award one cooperative agreement in the amount of $300,000 to assist in the development of a project to provide technical assistance and training to providers of English Language Training (ELT) at all levels. Technical assistance may be proposed for the following purposes:

• Design and improvement of employment-related ELT technical assistance and training which may be provided both to ELT teachers and program managers. The technical assistance and training may be focused on curricula, teaching strategies, and/or program development such as integrating ELT with employment-focused services, work-site ELT, and family literacy.

• Training in the areas of cultural adjustment, learning disabilities, physical and mental health, and in the use of new or innovative classroom technologies. Training may include topics such as identifying cultural adjustment/learning disabilities physical and mental health issues, accommodating such issues in the classroom, seeking professional consultation, and developing appropriate curricula. Training may also include introducing teachers to new and/or innovative ELT technologies, such as using software programs in classroom instruction. Technical assistance may be provided in the organization and administration of the language programs.

• Organization and facilitation of consultative and information-sharing sessions. Such sessions may include staff from similar types of agencies or from agencies serving similar groups of refugees. The purpose of the sessions is to provide an opportunity for ELT staff to share experiences. These sessions may also provide opportunities for different types of staff including ELT teachers, case managers, employment specialists, public health professionals, and individual refugee English tutors, to develop strategies for effective working relationships.

• Response to emerging needs of refugee populations. This technical assistance area involves preparing lessons and designing methodologies compatible with emerging refugee needs, particularly where the refugee populations not only have little exposure to English language and the American culture, but may not be literate in their own languages.

Applicants should propose technical assistance projects that are to be implemented nationally. Through this cooperative agreement, the grantee will submit a technical assistance plan for English Language Training that includes at least the following: (1) Program activity sites and participants; (2) assessment tools to be used to evaluate technical assistance needs; (3) technical assistance subject areas and curricula that will be used; (4) materials prepared for use in the delivery of the technical assistance; and (5) mechanisms to maximize volunteerism in English language training. ORR intends to review and approve the technical assistance plan for English Language Training in these areas and other activities proposed by the grantee in relation to the allowable activities listed below. ORR will also evaluate the technical assistance plan to ensure that it is comprehensive, flexible, and practical and provide direction and feedback for the appropriate implementation of the plan.

Allowable Activities

Applicants may propose all or a combination of the activities described below or additional innovative approaches justifying their usefulness for technical assistance for ELT providers.
—Assessment of ELT technical assistance needs in agencies and communities serving refugees;
—Organization and operation of training and facilitated sessions on identified ELT technical assistance needs. These sessions may include for a single agency, multi-site, or multi-project ELT facilitated discussions;
—Provision of technical assistance in writing, by e-mail and by telephone, to ELT providers and volunteers conducting one-to-one or group English tutorial sessions;
—Review of existing general ELT materials and recommendations on usefulness and appropriateness for use in refugee-oriented ELT with necessary modifications and to suit particular needs of various refugee groups, and reparation and distribution of materials relevant to identified ELT needs;
—Development of, or participation in, development of ELT curricula to effect employment and facilitate other refugee resettlement processes; and

—Facilitation of information sharing among a network of ELT providers in the improvement of English skills among refugees.

Review Criteria—English Language Training

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing to English training service providers assisting refugees. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known English language skills needs of various refugee groups. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to ELT instructors and service providers. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 4—Technical Assistance for Economic Development Programs

Purpose and Scope

ORR invites eligible entities to submit competing applications for a cooperative agreement to develop a project to provide technical assistance for economic development services for refugeesincluding Individual Development Account programs, Microenterprise development programs, and special self sufficiency and employment initiatives. Under this cooperative agreement, the grantee will implement various activities intended to assist ORR-funded IDA and Microenterprise grantees in the organization and administration of their projects. The grantee may also provide similar technical assistance to special self-sufficiency and employment grantees and to any other types of economic development grantees as designated by the Director of ORR.

Approximately $500,000 has been allocated for this program area. Through this cooperative agreement, the grantee will submit a technical assistance plan for economic development programs that includes the following: (1) Site visits and technical assistance activities; (2) written materials developed prior to the release of such documents; (3) locations of proposed workshops, topics, formats, and agendas; and (4) the maintenance and facilitation of database and reporting mechanisms. ORR intends to review and approve a technical assistance plan for economic development activities in these areas and other activities that are proposed by the grantee related to the allowable activities listed below. ORR will also carefully evaluate the implementation of the technical assistance plan by providing direction and feedback to ensure the effective administration of microenterprise and IDA programs and the proper utilization of technologies compatible with IDA, Microenterprise and other economic development activities.

Allowable Activities

Allowable activities include:

—Institution and implementation of on-site visits to assess technical assistance needs, provide technical assistance and training directly to grantees, and to ascertain best practices in administering IDA, Microenterprise, and other types of economic development programs, and to address the specific needs of refugees participating in these and related programs;

—Preparation of a variety of reports to be distributed to IDA, Microenterprise, and other economic development grantees to assist them in administering their programs, including site visit reports and best practices reports;

—Organization and operation of workshops for IDA, Microenterprise, and other grantees that have economic development programs for refugees. Workshop activities include facilitated discussions, presentations, and training in economic development and self-sufficiency activities;

—Provision of technical assistance in writing, by e-mail and by telephone, to IDA and Microenterprise grantees;

—Facilitation of a network of IDA and Microenterprise grantees to share information and to resolve problems, through, for example, the maintenance of a listserve, conference calls, etc.; and

—Maintenance of a database of characteristics and achievements of IDA, Microenterprise, and other economic development grantees and preparation and dissemination of program characteristics and achievements.

Applicants may propose additional techniques justifying their usefulness for providing technical assistance and information sharing activities to IDA, Microenterprise, and other economic development grantees.

Review Criteria—Economic Development

Proposed projects to provide technical assistance and information-sharing activities to Individual Development Account, Microenterprise and other economic development activities will be evaluated according to the following criteria:

1. Approach. The technical assistance plan is clearly described and appropriate. The proposed activities and timeframes are reasonable, feasible and reflective of the spread and variety of ORR-supported refugee economic development activities. The plan describes in detail how the proposed activities will be accomplished. (30 points)

2. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's goals. Staff qualifications show experience in providing technical assistance and information-sharing activities in the areas of administering financial, economic development and self-sufficiency programs. (20 points)

3. Organization Profiles. The applicant demonstrates the capacity to achieve the project's objectives. Organizational expertise and experience in the provision of technical assistance and information-sharing activities in refugee economic development areas are fully and clearly described. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is reasonable, cost-effective and clearly presented. (15 points)

Program Area 5—Technical Assistance for Child Welfare Services for Refugee Families and Communities

Purpose and Scope

The state of well-being of refugee families is an important contributing factor to family self-sufficiency and their initial resettlement. ORR proposes to award one cooperative agreement to assist in the development of a technical assistance project to help public and

private agencies in promoting collaboration among refugee communities, the network of refugee resettlement services, and children and youth services including child protective services, to promote the well-being of children in refugee families.

Refugee families residing in U.S. communities may encounter significant differences in child rearing practices compared to the ethnic or national customs of their country of origin, due to the following or related reasons: (1) Traditional cultures with strict parental roles may frequently conflict with the more egalitarian American family, resulting, for example, in differences in refugee youths' desire for early independence; (2) refugee families may experience trauma as a result of the persecution or flight, the effects of which may be destabilizing to family life; (3) refugee families may need income from both parents, unlike the practice in their home country, to adequately provide for their needs; (4) single refugee parent families face similar stresses that U.S. single parent families face in addition to the trauma from their refugee experiences; and (5) refugees may end up living in low-income neighborhoods with high crime rates and without the benefit of an ethnic community to provide information, guidance, and support.

Due to these factors and others, refugee families may encounter child protective services and other agencies of the judicial system. These experiences may not be easily understood by the refugee communities. As a result, refugee communities may become insecure and/or distrusting of the U.S. child welfare and child protective systems. This distrust or insecurity may result in difficulties for refugee families in their effort to establish homes that promote the well-being of the family members and where parents are secure in their role of providing a nurturing and educational environment for their children. These issues may also force children to face conflicts in meeting the expectations of their parents, fitting in with their peers, and developing a sense of belonging in their schools and social groups.

It has become clear over time that a productive relationship with child welfare services, child protective services, youth shelters, and other youth transitional and recreational services may be needed to promote refugee families' capacity to care for their children and/or youth in their new communities.

ORR is interested in supporting a national technical assistance cooperative agreement to promote collaboration among refugee families, refugee service providers and the children and youth service agencies that promote the welfare of refugee families, refugee youth, and children. This cooperative agreement is also intended to promote cultural and linguistic services or access to services for refugee families. Approximately $500,000 has been allocated for this program area.

Through this cooperative agreement, the grantee will submit a technical assistance plan for child welfare services for refugee families and communities that include the following: (1) Site visit locations and schedules; (2) written materials proposed for dissemination to the field; (3) workshop locations, topics, formats and agendas; and (4) technical support intended to strengthen the content and the delivery of the technical assistance being provided. ORR intends to review and approve technical assistance plan for child welfare services for refugee families and communities in these areas and other activities proposed by the grantee related to the allowable activities listed below. ORR will also provide direction and feedback in implementation of the critical elements of the technical assistance activities approved under this plan.

Allowable Activities

Applicants may propose all or some combination of the following, as well as other innovative strategies justifying their usefulness for technical assistance for the designated area:

—Provision of technical assistance to refugee communities, refugee service providers, school systems, school counselors, and refugee youth clubs, and child welfare and youth services agencies both in writing and through telephone consultation;
—Facilitating the electronic exchange of refugee child welfare information through a network website and listserve;
—Providing on-site group training or technical assistance meetings and workshops, drawing on positive traditions and community strengths to the extent practical;
—Promoting refugee families as foster parents;
—Identifying and disseminating youth coping skills in schools, communities and among families with deliberate focus on ORR funded youth and family related projects;
—Locating or developing training curricula and materials;
—Conducting on-site reviews of refugee child welfare services; and
—Providing technical assistance regarding guardianship to Unaccompanied Refugee Minor programs and service providers assisting children eligible for ORR services.

Review Criteria—Refugee Child Welfare Services

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing to assist parents and organizations in enhancing and promoting the well-being of refugee children and youth. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known technical assistance needs of organizations and individuals caring for refugee children and youth. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to organizations and individuals assisting and caring for refugee children and youth. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 6—Technical Assistance to Promote Refugee Housing Opportunities

Purpose and Scope

The primary goal of refugee resettlement is to assist refugees in becoming self-sufficient. One factor critical to achieving this goal is access to affordable and decent housing. ORR proposes to award one cooperative agreement to assist an agency in the development of a project that will provide technical assistance to ORR service providers in the provision of this essential service.

This program area is intended to assist both service providers and refugees in gaining access to affordable and decent housing for refugee

individuals and families. In most urban areas throughout the U.S. where the majority of refugees are resettled, rent levels are being pushed to record highs and there is a dwindling supply of affordable and decent housing. In many areas, rents are increasing faster than wages and recent energy price hikes have exacerbated an already critical situation. There is a need to assist resettlement agencies in developing innovative approaches to the housing crises to enable refugees to live as well-informed consumers in safe and affordable homes in desirable communities.

A grantee in this category will provide technical planning and assistance to promote refugee access to housing that meets acceptable standards for health, safety, affordability, good repair, and maintenance.

Approximately $200,000 has been allocated for this program area. One cooperative agreement may be awarded for one national project to promote refugee housing. Through this cooperative agreement, the grantee will submit a technical assistance plan to promote refugee housing opportunities that includes the following: (1) Proposed site visits and technical assistance activities and schedules; (2) all written materials developed prior to the release of such documents; (3) proposed workshop locations, topics, formats, and agendas; and (4) technical assistance plan to assist IDA grantees implementing IDA programs with housing components. ORR intends to review and approve a housing technical assistance plan in these areas and other activities proposed by the grantee in relation to the allowable activities listed below. ORR will also provide direction and feedback in addressing problems associated with refugee impacted areas and most affected refugee groups such as the elderly.

Allowable Activities

Applicants may propose all or a combination of the activities described below or new and innovative approaches justifying their usefulness to providing technical assistance in the area of housing assistance and services.

—Assesses housing needs across the nation and selects and prioritizes affected areas; plans for on-site visits to provide technical assistance to agencies, and identify best practices in providing services for counseling refugees about housing;
—Provision of information to agencies on relevant available services and programs in the area of public housing assistance, including programs designed for low-income first time home buyers;
—Research of housing regulations and provisions for the elderly, low-income families, large families and people with disabilities. Identifying and disseminating information on possible collaboration among public and private for profit and non-profit housing developers and providers;
—Preparation of a variety of reports to be distributed to agencies to assist them in providing housing services, including site visit reports and best practices reports;
—Organization and operation of workshops for agencies in the area of housing services, to include such subjects as effective use of assistance provided by HUD and other local assistance programs as available;
—Assistance in developing collaborative housing agreements and arrangements with employers, non-profit agencies, landlords, and other Federal and State agency programs;
—Training of case workers in orienting refugees to be responsible tenants including timely payment of rent, maintenance of apartments, building good credit, and negotiating with landlords;
—Exploring, developing, and promoting links between Individual Development Account programs, small businesses and other refugee economic activities to expand refugees' ability to rent or purchase homes and provide technical assistance to IDA grantees; and
—Provision of technical assistance to agencies in writing, by e-mail and by telephone.

Review Criteria—Refugee Housing Services

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing to refugee resettlement agencies and other non-profit and for profit organizations concerned with affordable housing for low income and needy families. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known housing technical assistance needs in resettling refugees. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to agencies that assist refugees with their housing needs. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 7—Technical Assistance for Crime Prevention and Safety Programs for Refugee Communities

Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award one cooperative agreement for the purpose of developing a project to provide integrated crime prevention technical assistance to refugee service providers, law enforcement entities, volunteers, refugee groups and communities that fosters partnerships among entities involved in building safe and crime-free communities where refugees live. Lack of awareness of the laws and practices of their new country that may result in crime or conflict with law enforcement is likely to slow or prevent the processes of refugee adjustment and/or efforts to achieve early self-sufficiency. ORR envisions that the technical assistance in this category will address a range of risk factors including family violence, social isolation, drugs, alcohol, as well as traditional child-rearing practices, spouse roles, and relationships of refugee families that may conflict with the laws and practices of the U.S. This technical assistance aims at reducing or eliminating crime and victimization among refugees, positively contributing to their safety and self-sufficiency, and supports the development of refugee youth training in leadership skills and conflict management.

Approximately $400,000 has been allocated for this program area. One cooperative agreement will be awarded for one national project. The successful applicant will have demonstrated expertise in planning and executing an integrated technical assistance plan to prevent criminal activities among refugee communities and demonstrated experience and flexibility in responding to the particular characteristics and needs of different ethnic and age groups.

Through this cooperative agreement, the grantee will submit a technical assistance plan for crime prevention and safety programs for refugee communities in the following areas: (1) Technical assistance and training curricula; (2) community outreach activity; (3) written training and informational materials developed and proposed for dissemination to the field; and (4) proposed workshops locations, topics, schedules, presentation formats, and agendas that cover a wide range of ethnic and refugee age groups. ORR intends to review and approve a technical assistance plan in these areas and other activities related to the allowable activities listed below. ORR will also provide direction and feedback to the grantee to ensure the proper implementation of the crime prevention and safety activities.

Allowable Activities

Applicants may propose all or some combination of the following, as well as other innovative strategies justifying their usefulness for technical assistance in the designated area:

—Assessing crime prevention technical assistance and training needs and sharing outreach techniques with various refugee communities and age groups.
—Promoting positive relationships between refugee communities and the criminal justice system.
—Disseminating information materials and technical advice related to crime prevention using models and best practices that work to reduce or eliminate crime and victimization among refugees;
—Collecting and summarizing data and information on program performance for ORR-funded programs that focus on crime prevention and related preventive and educational programs;
—Facilitating the electronic exchange of information through a website or listserve, and the collection and reporting of program activities, training and program impact information;
—Conducting group training or technical assistance meetings and workshops;
—Developing training curricula and outreach techniques to vulnerable groups and other supportive materials;
—Conducting on-site program reviews where appropriate;
—Maintaining a database of characteristics, noting trends and documenting achievements of crime prevention efforts; and
—Identifying and disseminating potential crime prevention resources, partnership opportunities, relevant research results, literature and possible community initiatives addressing refugee community risk elements.

Review Criteria—Crime Prevention and Safety

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing to assist refugee communities in their efforts to prevent crime and resolve conflicts. (30 points)

2. Approach. The technical assistance plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known legal and crime issues in refugee communities. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance in crime prevention in refugee communities. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 8—Services for Asylees via a Multilingual Information and Referral Hotline

Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award a grant for the purpose of operating an asylee information and referral toll-free hotline. The purpose of this hotline is to assist asylees by providing them access to information on services in their respective communities and States. An extensive language bank capacity with all major language groups is required for hotline operators to communicate with asylees. ORR has an agreement with the asylum offices of the Department of Homeland Security (DHS) to include in the text of letters granting asylum a toll-free number and information needed to access the refugee service network.

ORR is currently seeking a similar agreement with immigration courts under the Executive Office for Immigration Review (EOIR) to have similar information provided in letters granting asylum. Additional outreach efforts should also be conducted to expand enrollment of asylees in refugee programs and services.

Approximately $300,000 has been allocated for this program area. One grant may be awarded for one national project. The successful applicant should demonstrate expertise in planning and executing an integrated technical assistance plan of information and referral to assist asylees to access the ORR-funded refugee service network via a multilingual toll-free hotline number.

Through this grant, ORR will review and approve a service plan for asylees that includes: (1) Technical equipment required for a multilingual toll-free number; (2) accurate and up to date informational materials in a number of languages developed and proposed for dissemination to the field via the hotline; (3) the multilingual staff phone operators to man the hotline; and (4) an ability to assess and address problems with asylee access to local refugee services.

Allowable Activities

Applicants should propose all of the following activities.

Applicants are encouraged to propose additional innovative strategies providing justifications for their usefulness in the designated service area.

—Maintain a 1–800 asylee information and referral number with multiple selections for each major refugee language (minimum of seven languages);
—Create and update the script and protocol guidelines for hotline operators;
—Develop and maintain information in a multitude of languages on services and eligibility requirements to access the refugee service provider network including State-funded services and services provided through Voluntary Agency affiliates, particularly the Matching Grant program for persons with newly awarded grants of asylum;
—Maintain a database of characteristics, noting trends of languages needed, location of callers, ethnicity/country of origin of asylees, difference in time between date of grant of asylum and call to the hotline, and type of information sought through the phone calls; and
—Collect and summarize data and information on callers to the asylee

hotline for ORR funded programs as appropriate.

Review Criteria ''Multilingual Hotline

1. Organizational Profiles. The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of services and information sharing to assist asylees in accessing appropriate services. (30 points)

2. Approach. The service plan is clearly described and appropriate, and the proposed activities and time frames are reasonable. The service plan clearly and fully describes how the applicant will assess the need for services, the scope of proposed activities, and how the proposed activities are expected to address known service needs of asylees. (20 points)

3. Staff and Position Data. Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications clearly demonstrates applicable experiences needed to assist asylees. (20 points)

4. Results or Benefits Expected. The results or benefits expected are clearly explained and are appropriate to the activities proposed. (15 points)

5. Budget and Budget Justification. The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Part II: General Instructions for Preparing a Full Project Description

Purpose and Introduction

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing by identifying the page number of the information should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Applicants shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what the project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, applicants can describe the number of programs to which technical assistance is provided, the number of workshops to be conducted, and for the hotlines, the number of asylees to receive information and number and type of referrals to appropriate services. When accomplishments cannot be quantified by activity or function, events should be chronologically listed to show the schedule of accomplishments and their target dates.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people or organizations to be served and the number of activities to be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals that will work on the project along with a short description of the nature of their effort or contribution.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal

Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements

Include written agreements between grantees and sub-grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application or received by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), and annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Applicant that delegate part of the project to another agency must provide budget narrative along with supporting information for the delegated agency.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant has currently approved an indirect cost rate by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current approved rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

The total direct, total indirect as well as the total project costs should be clearly indicated.

Part III: The Review Process

Intergovernmental Review: State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. *Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.*

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed, no longer participate in the process. *But grant applicants are still eligible to apply for the grant even if your state, territory, commonwealth, etc. does not have a ''State Single Point of Contact.'' jurisdictions without ''state single points of contacts'' include:* Alabama; Alaska; Arizona; Colorado; Connecticut; Indiana; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; Washington; and Wyoming.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance. See also the Web site—(*http://www.whitehouse.gov/omb/grnts/spoc.httm*)

Jurisdictions that participate in the Executive Order process have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and State official recommendations that may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, ATTN: Ms. Daphne Weeden, Grants Officer.

A list of the Single Points of Contact for each State and Territory is included in this announcement.

OMB State Single Point of Contact Listing

Arkansas. Mr. Tracy L. Copeland, Manager, State Clearinghouse Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206.

California. Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018.

Delaware. Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. du Pont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661.

District of Columbia. Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW.—Suite 1200, Washington, DC 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: *charlesnic@yahoo.com* or *cnichols-ogmd@dcgov.org.*

Illinois. Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800.

Indiana. Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323.

Iowa. Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809.

Kentucky. Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849.

Maine. Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489.

Maryland. Linda C. Janey, JD Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: *Linda@mail.op.state.md.us.*

Michigan. Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869.

Mississippi. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764.

Missouri. Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395.

Nevada. Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983.

New Hampshire. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2 Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728.

New Mexico. Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948.

North Carolina. Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571.

North Dakota. Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308.

Rhode Island. Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083.

South Carolina. Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645.

Texas. Tom Adams, Single Point of Contact, State of Texas Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: *tadams@governor.state.tx.us.*

Utah. Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547.

West Virginia. Judith Dryer, Chief Program Manager, West Virginia Development, Office Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362.

Wisconsin. Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931.

Territories

Guam. Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825.

Puerto Rico. Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103.

Northern Mariana Islands. Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272. Please direct all questions and correspondence about intergovernmental review to: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272.

Virgin Islands. Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct all questions and correspondence about intergovernmental review to: Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that: (1) The application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria are designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Part IV: Application Submission

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement.

Each application should include one signed original and two additional copies.

Each program application narrative portion should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices to the proposal should not exceed 25 pages and should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent for partnership agreements. Please do not include books or video tapes as they are not easily reproduced and are therefore, inaccessible to the reviewers. Each page should be numbered sequentially, including the attachments or appendices. Audit reports are not included in the 25-page limitation of the attachment section.

Application Materials

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-Construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

Application Submission Information

The closing date for submission of applications is 30 days from publication date. Mailed applications received after the closing date will be classified as late. Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date by ACF in time for the independent review at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 4th Floor, Aerospace Building, 901 D Street, SW., 20447, Attention: Ms. Daphne Weeden, Grants Officer. Applications that may be hand carried to the above address by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received at the

above address on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, excluding Federal holidays. The address must appear on the envelope/package containing the application with the note ''Attention: Ms. Daphne Weeden.'' (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF will acknowledge receipt of applications by letter.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail services. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Daphne Weeden, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, (202) 401–4577.

Certification, Assurances, and Disclosure Required for Non-Construction Programs

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046).

Applicants must sign and return the certification with their application. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make appropriate certification that they are not presently debarred, suspended and otherwise ineligible for the award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Public Law 103–227, part C Environment Tobacco Smoke (also known as the Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicable Administrative Regulations: Applicable DHHS grant administration regulations can be found in 45 CFR part 74 or 92.

Reporting Requirements: Grantees are required to file the Financial Status Report (SF–269) and Program Performance Report on a semi-annual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes. The official receipt point for all reports and correspondence is the ORR Grants Officer, Ms. Daphne Weeden, Administration for Children and Families/Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401–4577.

An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer. The mailing address is: Ms. Daphne Weeden, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447. A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: July 30, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–20261 Filed 8–7–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in September 2003.

A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, and a Department of Transportation drug testing program update. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include an evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App.2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, 301–443–6014 (voice). The transcript for the open session will be available on the following Web site: *http://workplace.samhsa.gov.* Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention Drug Testing Advisory Board.

Meeting Date: September 3, 2003; 8:30 a.m.–4:30 p.m., September 4, 2003; 8:30 a.m.–noon.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: September 3, 2003; 8:30 a.m.–9:30 a.m. *Closed:* September 3, 2003; 9:30 a.m.–4:30 p.m. *Closed:* September 4, 2003; 8:30 a.m.–noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary; 301–443–6014 (voice) or 301–443–3031 (fax).

Dated: August 1, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–20202 Filed 8–7–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Highway Watch Program: Application Notice Describing the Program and Establishing the Closing Date for Receipt of Applications Under the Highway Watch Program

AGENCY: Transportation Security Administration, Department Homeland Security.

ACTION: Notice inviting applications of the Highway Watch Program.

SUMMARY: The existing Highway Watch Program will be expanded to include passenger carriers and first responders and to create a larger call center capable of communicating with program participants to link transportation-based Information Sharing and Analysis Centers.

DATES: The program announcement and application forms for the Highway Program are expected to be available on or about August 5, 2003. Application must be received: Transportation Security Administration, TSA Headquarters—West Building, 9th Floor, TSA–8, 601 South 12th Street, Arlington, Virginia 22202–4220; on or before 4 p.m. EST, September 8, 2003.

ADDRESSES: Program Announcement #03MLPA0001 for the Highway Watch Program will be available through the TSA Internet at *http://www.tsa.dot.gov* under Industry Partners.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Ouellet, Transportation Security Administration, Office of Maritime and Land Security, 701 12th Street, Arlington, VA 22201, (571) 227–2167, E-mail: *Ronald.Ouellet@dhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Highway Watch Program is to promote security awareness among all segments of the commercial motor carriers and transportation community. The Highway Watch Program plans to train the Nation's commercial drivers to observe and report any suspicious activities or items that may threaten the critical elements of the Nation's highway transportation system.

The Transportation Security Administration seeks a provider(s) capable of achieving one or more of the following program priorities: (1) Participants identification and recruitment; (2) training; (3) communications; and (4) information analysis and distribution. In addition to these four priorities, the provider(s) must develop and implement a data system for tracking and reporting project requirements.

Authority for this program is contained in the fiscal year 2003 Appropriations Act under Pub.L. 108–7. Total anticipated funding for Highway Watch Program is $19,700,000. Awards under this program are subject to availability of funds.

Issued in Arlington, VA.

Mark Johnson,

Deputy Assistant Administrator, Maritime and Land Security.

[FR Doc. 03–20274 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal Property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 31, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–19940 Filed 8–7–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Comprehensive Test Ban Treaty. Current OMB approval number: 1028–0059.

Abstract: The information, required by the Comprehensive Test Ban Treaty (CTBT), will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

Bureau form number: 9–4040–a.

Frequency: Annual.

Description of respondents: Companies that have conducted in the last calendar year, or that will conduct in the next calendar year, explosions with a total charge size of 300 tons of TNT-equivalent, or greater.

Annual Responses: 3,000.

Annual burden hours: 750.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 03–20270 Filed 8–7–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

[UT080–1310–00]

Notice of Availability of the Draft Environmental Impact Statement on the Resource Development Group Uinta Basin Natural Gas Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement (DEIS) for the proposed Resource Development Group Uinta Basin Natural Gas Project. The DEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of a proposed natural gas development on 79,800 acres in the Atchees Wash oil and gas production region. The proponent proposes to drill up to 423 gas production wells, accessed by approximately 126 miles of new roads. Three additional alternatives to the proposed action are also analyzed.

DATES: Written comments on the Resource Development Group Uinta Basin Natural Gas Project DEIS will be accepted for 45 days following the date the Environmental Protection Agency (EPA) publishes this Notice of Availability in the **Federal Register**. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, the BLM Vernal Field Office Web site at *http://www.blm.gov/utah/vernal and/or mailings.*

The BLM asks that those submitting comments on the DEIS make them as specific as possible with references to page numbers and chapters of the document. Comments that contain only opinions or preferences will not receive a formal response, but will be considered and included as part of the BLM decision-making process.

ADDRESSES: Please address questions, comments or concerns to the Vernal Field Office, Bureau of Land Management, Attn: Jean Nitschke-Sinclear 170 South, 500 East, Vernal, UT 84078, fax them to 435–781–4410, or send e-mail comments to the attention of Jean Nitschke-Sinclear at *jean_nitschke-sinclear@blm.gov.* A copy of the DEIS has been sent to affected Federal, State, and local government agencies; and persons and entities who indicated to the BLM that they wished to receive a copy of the DEIS.

Copies of the Resource Development Group Uinta Basin Natural Gas Project DEIS are available at the BLM Vernal Field Office at the address above. The DEIS may also be viewed and downloaded in PDF format at the BLM Vernal Field Office Web site at *http://www.blm.gov/utah/vernal.*

FOR FURTHER INFORMATION CONTACT: Jean Nitschke-Sinclear at BLM's Vernal Field Office listed above or telephone (435–781–4400).

SUPPLEMENTARY INFORMATION: Written comments, including names and addresses of respondents, will be available for public review at the BLM Vernal Field Office during normal business hours (7:45 a.m. to 4:30 p.m.). Responses to the comments will be published as part of the Final Environmental Impact Statement (FEIS). Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

The DEIS analyzes proposed natural gas development in 79,800 acres in the Atchees Wash oil and gas production region, approximately 50 miles south of Vernal in Townships 11 and 12 South; Ranges 23 and 24 E., SLBM. The proposed project is located primarily on BLM-administered lands (69,560 acres) and includes 9,080 acres of State administered lands and 1,160 acres of private lands. Sixty-four wells and 139 miles of roads exist within the project area. The proponent anticipates drilling up to 423 additional wells at a rate of 14 to 40 a year, accessed by approximately 126 miles of new roads. The wells would be drilled on a spacing pattern based on geology and reservoir qualities. Some areas could be developed on a 40-acre pattern while others could be drilled on patterns of 160 acres or larger. The Wasatch Formation (average depth of 2,000–4,000 feet) and Mesa Verde Formation (average depth of 4,000–6,000 feet) are the primary producing horizons in this region. Unpainted steel gas gathering lines would be laid on the surface and integrated into the existing gas pipeline gathering and transmission network. One new compressor station is anticipated.

The Notice of Intent for preparation of the Draft Environmental Impact Statement on the Resource Development Group Uinta Basin Natural Gas Project was published in the **Federal Register** on October 22, 1999. Public participation was sought through scoping, public meetings and stakeholder meetings conducted with interested agencies and organizations. Specifically, BLM conducted a public scoping and informational open house in Vernal, Utah on November 18, 1999; and stakeholders meetings on February 14–17, 2000. Through the scoping process several issues were identified and are addressed in the DEIS. The BLM has developed three alternatives in addition to the proposed action for analysis in the DEIS. The alternatives range from continuation of current management (No Action) to different combinations of environmental protection and development.

Dated: June 6, 2003.

Sally Wisely,

State Director.

[FR Doc. 03–19691 Filed 8–7–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–03–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on April 11, 2003:

The supplemental plat, showing amended lottings in the N1/2 of section 6, Township 22 South, Range 60 East,

Mount Diablo Meridian, Nevada, was accepted April 11, 2003.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management and the Hughes Corporation.

2. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on April 14, 2003:

The plat, in four sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of sections 25 and 36, and the further subdivision of sections 25 and 36, and metes-and-bounds surveys in sections 25, 26 and 36, Township 21 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 810, was accepted April 14, 2003.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 6, and a metes-and-bounds survey in section 6, Township 22 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 810, was accepted April 14, 2003.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management and the Hughes Corporation.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on April 15, 2003:

The supplemental plat, showing a subdivision of lots 5 and 12, section 1, Township 22 South, Range 59 East, Mount Diablo Meridian, Nevada, was accepted April 15, 2003.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management and the Hughes Corporation.

4. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on May 1, 2003:

The supplemental plat, showing a subdivision of original lot 5, section 6, and correcting an erroneous area shown for original lot 4, section 6, on the original plat, Township 17 North, Range 55 East, Mount Diablo Meridian, Nevada, was accepted April 29, 2003.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

5. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on May 22, 2003:

The supplemental plat, showing a subdivision of lots 15, 16, and 265, and a revised area for lot 19, in the NW1/4NW1/4NW1/4 of section 16, Township 22 South, Range 61 East, Mount Diablo Meridian, Nevada, was accepted May 20, 2003.

The supplemental plat, showing a subdivision of lots 39, 40, 41, and 42, and revised areas for lots 29 through 38, and lots 43 and 44, in the SW1/4NW1/4 and the SE1/4NW1/4 of section 20, Township 22 South, Range 61 East, Mount Diablo Meridian, Nevada, was accepted May 20, 2003.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

6. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: July 29, 2003.

Robert M. Scruggs,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 03–20217 Filed 8–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Freeport Regional Water Project, Sacramento, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact DES03–48 Statement/Environmental Impact Report (Draft EIS/EIR) and notice of public hearings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the Freeport Regional Water Authority (FRWA) have made available for public review and comment the Draft EIS/EIR for the Freeport Regional Water Project.

The proposed project would construct and operate a water supply system to meet regional water supply needs. The project would (1) support acquisition of additional Sacramento County Water Agency (SCWA) surface water entitlements to promote efficient conjunctive use of groundwater in its Zone 40 area, consistent with the Sacramento Area Water Forum Agreement and County of Sacramento General Plan policies; (2) provide facilities through which SCWA can deliver existing and anticipated surface water entitlements to Zone 40 area; (3) provide facilities through which East Bay Municipal Utility District (EBMUD) can take delivery of a supplemental supply of water that would substantially meet its need for water and reduce existing and future customer deficiencies during droughts; and (4) improve EBMUD system reliability and operational flexibility during droughts, catastrophic events, and scheduled major maintenance at Pardee Dam or Reservoir.

DATES: Submit written comments on the Draft EIS/EIR on or before October 7, 2003 at the address provided below. Four public hearings have been scheduled to receive oral or written comments regarding the project's environmental effects:

- Thursday, September 4, 2003, 6:30–8:30 p.m., Sacramento, CA
- Tuesday, September 9, 2003, 6:30–8:30: p.m., Herald, CA
- Wednesday, September 10, 2003, 6:30–8:30 p.m., Oakland, CA
- Thursday, September 11, 2003, 6:30–8:30 p.m., Sacramento, CA

ADDRESSES: The public hearings will be held at the following locations:

- Sacramento, CA (September 4)—Pannell Community Center, 2450 Meadowview Road
- Herald, CA—Herald Fire Department, 127 Ivie Road
- Oakland, CA—EBMUD Training Room, 375 11th Street, 2nd Floor
- Sacramento, CA (September 11)—Wildhawk Golf Course, 7713 Vineyard Road

Please send written comments to Freeport Regional Water Project, Draft EIS/EIR Comments, Freeport Regional Water Authority, 1510 J Street #140, Sacramento, CA 95814, Fax: (916) 444–2137.

Copies of the Draft EIS/EIR may be requested from Mr. Kroner at the above address or by calling (916) 326–5489. See Supplementary Information section for locations where copies of the Draft EIS/EIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Schroeder, Reclamation, at (916) 989–7274, TDD (916) 989–7285, or e-mail: *rschroeder@mp.usbr.gov*; or Mr. Kurt Kroner, at (916) 326–5489, or e-mail at *k.kroner@frwa.com.*

SUPPLEMENTARY INFORMATION: The Draft EIS/EIR addresses facilities-related impacts including the effects of project construction and operation on hydrology, water quality, fish resources, recreation, vegetation and wildlife, visual resources, cultural resources, land use, geology, soils, seismicity,

groundwater, traffic and circulation, air quality, noise, and public health and safety. Diversion-related impacts include the effects of increased diversions from the Sacramento River and associated changes in Reclamation's operation of Central Valley Project (CVP) facilities. Project diversions therefore may directly or indirectly affect the Sacramento River, its tributaries, and Delta resources including water supply, fish and aquatic habitat, riparian vegetation and habitat, water quality, recreation, visual and cultural resources, and power supply. The Draft EIS/EIR also evaluates potential growth-inducing impacts for the SCWA and EBMUD water service areas. An evaluation of cumulative hydrologic and water service area impacts associated with reasonably foreseeable actions is also included.

Copies of the Draft EIS/EIR are available for public inspection and review at the following locations:

- East Bay Municipal Utility District, 375 11th Street, Oakland, CA, 94607
- Sacramento County Water Agency, 827 Seventh Street, Room 301, Sacramento, CA, 95814
- Sacramento County Clerk-Recorder's Office, 600 Eighth Street, Sacramento, CA, 95814
- Sacramento Public Library, 828 I Street, Sacramento, CA 95814
- Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001
- Elk Grove Community Library, 8962 Elk Grove Boulevard, Elk Grove, CA, 95624
- Belle Cooledge Community Library, 5600 Southland Park Drive, Sacramento, CA, 95822
- Valley Hi—North Laguna, 6351 Mack Road, Sacramento, CA, 95823
- Southgate Community Library, 6132 66th Avenue, Sacramento, CA, 95823
- Galt Neighborhood Library, 1000 Caroline Avenue, Sacramento, CA, 95632
- Pannell Community Center, 2450 Meadowview Road, Sacramento, CA, 95832
- Clarksburg Branch Library, 52915 Netherlands Road, P.O. Box 229, Clarksburg, CA, 95612
- Lodi Public Library, 201 W. Locust Street, Lodi, CA, 95240

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Hearing Process Information: The purpose of the public hearing is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIS/EIR. Written comments will also be accepted.

Dated: July 15, 2003.

William H. Luce, Jr.,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 03–20273 Filed 8–7–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–027]

Sunshine Act Meeting; Notice

AGENCY: United States International Trade Commission.

TIME AND DATE: August 18, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–753–756 (Review) (Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 29, 2003.)
5. Inv. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Second Remand) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote. (Commissioners' views on remand are currently scheduled to be transmitted to the United States Court of International Trade on or before September 19, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 5, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20364 Filed 8–6–03; 11:10 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Secretary is soliciting comments concerning the proposed collection: National Agricultural Workers Survey. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 7, 2003.

ADDRESSES: Mr. Daniel Carroll, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–2312, Washington, DC 20210, telephone (202) 693–5077, fax (202) 693–5961, e-mail *carroll.daniel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION: I. *Background:* The Department of Labor

(DOL) has been continually surveying hired farm workers since 1988 via the National Agricultural Workers Survey (NAWS). The survey's primary focus is to describe the demographic and employment characteristics of hired crop farm workers at the national level. To date, over 36,000 farm workers have been interviewed.

The NAWS provides an understanding of the manpower resources available to U.S. agriculture, and both public and private service programs use the data for planning, implementing, and evaluating farm worker programs. It is the only national data source on the demographic and employment characteristics of hired crop farm workers.

The NAWS samples crop farm workers in three cycles each year to capture the seasonality of agricultural employment. Workers are located and sampled at their work sites. During the initial contact, arrangements are made to interview the respondent at home or at another convenient location. Currently, approximately 4,000 interviews are obtained each year.

The NAWS presently includes a primary questionnaire and four supplements (youth, parent, injury, and health). Beginning with the October 2003 interview cycle, the Department proposes to discontinue the youth, parent and occupational health supplements.

The youth and parent supplements were implemented in fiscal year 2000 as part of the Department's Child Labor Initiative. They were designed to collect information on the demographic and employment conditions of youth farm workers and on the barriers to education experienced by the children of farm workers.

Having collected four years of data under this initiative, the Department will evaluate the effectiveness of these instruments and methodology for obtaining information on youth crop workers. The Department therefore proposes to discontinue the youth and parent supplements at this time.

The occupational health supplement was designed to assess the health status of hired crop farm workers. Funded by the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (CDC/NIOSH), the supplement was implemented in fiscal year 1999 to satisfy research priorities emanating from the Agricultural Occupational Safety and Health Initiative. CDC/NIOSH is proposing to exclude the occupational health supplement in fiscal year 2004. This would provide an opportunity for NIOSH to more thoroughly examine previously collected data and to evaluate the need for updating or modifying the supplement for future inclusion.

The purpose of this notice is to solicit comments regarding the ongoing primary questionnaire and occupational injury supplement, and the discontinuance of the youth, parent and occupational health supplements. The questionnaires are described below.

The NAWS Primary Questionnaire (ongoing)

The primary instrument is administered to crop agricultural workers 14 years and older. It contains a household grid, where the education level and migration history of each member of the respondent's household is recorded, and an employment grid, where a full year of employment and geographic movement of the respondent is detailed. It also contains sections on income, assets, legal status, use of public services, and experience working with and training on the safe use of pesticides.

The employment grid includes the task and crop for agricultural jobs, type and amount of non-agricultural work, periods of unemployment and time spent outside the U.S., and the respondent's location for every week of the year preceding the interview. For the respondent's current job, the NAWS collects information on wages and payment method (piece or hourly), health insurance, workers' compensation and unemployment insurance, housing arrangements, and other benefits and working conditions.

The demographic information collected include age, gender, place of birth, marital status, language ability, education and training, and family history working in U.S. agriculture.

The Occupational Injury Supplement (ongoing)

This CDC/NIOSH-sponsored supplement has been in place since fiscal year 1999. It is administered to all NAWS respondents who had a qualifying occupational injury in U.S. agriculture in the 12-month period before the date of interview. For each qualifying injury, the respondent is asked how, when and where the injury occurred, the body part(s) injured, where medical treatment was received, how the treatment was paid for, and the number of days the respondent couldn't work or worked at a reduced activity level.

The Youth Supplement (To Be Discontinued)

This supplement contains additional labor and education components and is administered to NAWS respondents ages 14 to 18.

The labor component solicits the respondent's age when he/she first went to an agricultural field in the U.S. (for any reason), and the age when he/she first worked or assisted a relative in a field. The method of payment, if any, for the first working or helping experience in the field is also recorded. This supplement also asks the youth respondent about any implements and equipment used while doing farm work.

The education component solicits school and attendance information for the 12-month period preceding the date of interview. For those youth who did not attend any school in the previous 12 months, the following information is obtained: the date of last attendance, type and location of school, reasons for no longer attending, and educational aspirations in the U.S.

The Parent Supplement (To Be Discontinued)

Type of Review: Revision.

Agency: Office of the Secretary.

Title: National Agricultural Workers Survey.

OMB Number: 1225–0044.

Affected Public: Farm workers and farm employers.

Total Respondents: 5,500 (4,000 farm workers will receive an interview and 1,500 employers will be briefly interviewed to ascertain the location of the potential worker respondents).

Time per Response: 20 minutes for employers; 60 minutes for workers.

Estimated Total Burden Hours: 4,536 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 5, 2003.

Roland G. Droitsch,

Deputy Assistant Secretary for Policy.

[FR Doc. 03–20243 Filed 8–7–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage distribution decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

VOLUME V

NONE

VOLUME VI

NONE

VOLUME VII

NONE

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 30th day of July, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–19989 Filed 8–7–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canyon Fuel Company, LLC

[Docket No. M–2003–052–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Skyline Mine (MSHA I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests that its previously granted petition for modification, docket number M–2000–040–C, be amended to revise paragraph V.(C) of the Proposed Decision and Order to read as follows: ''In addition to requirements of V.(B), diesel-powered equipment classified as

'heavy-duty' under 30 CFR 75.1908(a), must include a means, maintained in operating condition, to prevent the spray from ruptured diesel fuel, hydraulic oil, and lubricating oil lines from being ignited by contact with engine exhaust system component surfaces such as shielding, conduit, non-absorbent insulating materials, or other similar means.'' The petitioner asserts that this amendment to its previously granted petition will prevent a diminution of safety caused by application of the existing standard and that this amendment will at all times provide at least the same measure of protection as the existing standard.

2. Jim Walter Resources, Inc.

[Docket No. M–2003–053–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its No. 4 Mine (MSHA I.D. No. 01–01247), No. 5 Mine (MSHA I.D. No. 01–01322), and No. 7 Mine (MSHA I.D. No. 01–01401) all located in Tuscaloosa County, Alabama. The petitioner proposes to use deep well submersible pumps driven by electric motors to remove water from sealed areas in the underground mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 8, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 31st day of July 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–20269 Filed 8–7–03; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Freedom of Information Act—General Notice of Organization, Function, Rules of Procedure, and Substantive Rules

AGENCY: Legal Services Corporation.

ACTION: General notice of the organization, function, rules of procedure, and substantive rules of the Legal Services Corporation.

SUMMARY: This notice is being published by LSC in accordance with 5 U.S.C. 552(a)(1) and for the guidance and interest of the public.

FOR FURTHER INFORMATION CONTACT: Pat Batie, FOIA Officer, Office of Legal Affairs, Legal Services Corporation, 3333 K St., NW, 3rd Floor, Washington, DC 20007; (202) 295–1625 (phone); (202) 337–6519 (fax); *pbatie@lsc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section (a)(1) of the Freedom of Information Act (''FOIA'') 5 U.S.C. 552, LSC publishes in the **Federal Register**, for the guidance and interest of the public, the following general information concerning LSC:

(a) A description of the organization of the Corporation and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which LSC's functions are channeled and determined;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations; and

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by LSC.

I. Description of LSC

LSC is a private, non-profit corporation, headquartered in Washington, DC and established by Congress in 1974 to assure equal access to justice under the law for all Americans. LSC is headed by a bipartisan Board of Directors appointed by the President and confirmed by the Senate. LSC does not provide legal services directly to indigent clients; rather it provides grants to independent local programs chosen through a system of competition. Currently, LSC funds 197 legal aid programs. Together these programs serve every county and congressional district in the nation, as well as the U.S. territories.

In 2001, LSC grantees handled more than one million civil cases. The most common types of cases handled by LSC-funded programs involve family law, housing, employment, government benefits, and consumer issues. LSC-funded programs do not handle criminal cases, nor do they accept fee-generating cases that private attorneys are willing to accept on a contingency basis. LSC recipients are also prohibited from claiming or collecting attorney's fees and engaging in class actions, rulemaking, lobbying, litigation on behalf of prisoners, representation in drug-related public housing evictions, and representation of certain categories of aliens.

II. Organization

LSC consists of five major components: the Office of the President, the Office of Compliance and Administration, the Office of Legal Affairs, the Office of Programs, and the Office of Governmental Relations and Public Affairs. In addition to these primary offices there is the Office of Inspector General. While the Office of Inspector General exists as part of LSC, the Office functions independently from the rest of the LSC components, with the Inspector General appointed directly by the LSC Board of Directors. The major functions and responsibilities of each of these components is described below.

Office of the President

The Office of the President is responsible for the implementation of Board policy and oversight of the Corporation's operations.

Office of Compliance and Administration

The Office of Compliance and Administration is comprised of the Office of Compliance and Enforcement, Office of Human Resources, Office of Financial and Administrative Services and Office of Information Technology.

The Office of Compliance and Enforcement (OCE) is responsible for ensuring that LSC grantees are complying with the laws, regulations, terms and conditions applicable to them as a condition of receipt of Federal funds. OCE conducts investigations and audits of grantees, responds to inquiries and complaints relating to grantee compliance with applicable law and regulations, processes requests for prior approvals and Private Attorney Involvement and fund balance waivers, and approves subgrant agreements.

The Office of Human Resources (OHR) develops and administers human resources policies, procedures, and

strategies; and to provide advisory services on human resource issues to management and staff.

The Office of Financial and Administrative Services is comprised of the Office of the Comptroller and the Administrative Services Division. The Office of Comptroller maintains the efficiency of the Corporation's financial system and the integrity of its accounts, oversees procedures that generate all of the Corporation's financial transactions, and provides accounting and financial information to the LSC Board of Directors, the President and Office Directors. In addition to cash management, accounts payable, payroll, grants administration and other routine financial transactions, the Office of Comptroller generates annual and periodic financial reports and assists with the accumulation of data for LSC's Budget Request to Congress. The Administrative Services Division (ASD) provides day-to-day administrative support services to facilitate efficient operations of LSC.

The mission of the Office of Information Technology (OIT) is to develop, implement and maintain a networked computer environment, featuring a well defined integrated information system for LSC.

Office of Legal Affairs

The Office of Legal Affairs (OLA) serves as in-house counsel and chief legal advisor to the Corporation and performs the duties of Secretary of the Corporation. The General Counsel carries out traditional ''lawyer'' functions, including negotiating, drafting and reviewing legal instruments such as contracts, settlement agreements, releases, applications for funding, and grant documents, as well as representing LSC's interests in litigation, directly or through retention and oversight of outside counsel. OLA provides legal advice to the Corporation's Board of Directors and President, as well as to the various offices in the Corporation. Furthermore, the General Counsel is responsible for interpreting statutory requirements and drafting implementing regulations for consideration by the Board.

Office of Programs

The Office of Programs is comprised of the Office of Program Performance and the Office of Information Management. The Office of Program Performance (OPP) is charged with the design and administration of the competitive grants process, the encouragement of competition, and the development and implementation of strategies to improve program quality. Program improvement efforts include identification of areas of weakness and follow-up for individual recipients, identification and sharing of innovations and ''best practices'' among recipients and others in the legal services delivery system, as well as broader strategies for improvement of the delivery system.

The Office of Information Management (OIM) is responsible for gathering and disseminating information about LSC grantees and the delivery of legal services. This responsibility includes the development of Internet-based applications for obtaining information about the delivery of legal services by LSC grantees, the identification and collection of information about the civil legal needs of eligible clients, and the sharing of that information with LSC staff, grantee staff, and other interested parties.

Office of Government Relations and Public Affairs

The Office of Governmental Relations and Public Affairs is responsible for managing LSC's communications and requests for information from Congress, the Executive Branch, the media, and the general public. The office coordinates the production of LSC's Fact Book and Annual Report.

Office of the Inspector General

The Office of the Inspector General (OIG) has two principal missions: to assist management in identifying ways to promote efficiency and effectiveness in the activities and operations of LSC and its grantees; and to prevent and detect fraud and abuse. The OIG's primary tool for achieving these missions is fact-finding through financial, performance and other types of audits and reviews, as well as investigations into allegations of wrongdoing. Its fact-finding activities enable the OIG to develop recommendations to LSC and grantee management for actions or changes that will correct problems, better safeguard the integrity of funds, improve procedures or otherwise increase efficiency or effectiveness.

III. Availability of Information

As an independent Corporation created by public law, LSC is governed by statute. The LSC Act and regulations provide guidance on the operation and responsibilities of LSC and its grantees. The Act can be found at 42 U.S.C. 2996 *et seq.* and the regulations at 45 CFR part 1600 *et seq.* Furthermore, both the Act and regulations are posted at LSC's Web site, which is given below. LSC is further subject to restrictions contained in its annual appropriations legislation. The current Appropriations Act for FY 2003 is located at Pub. L. 108–7, 117 Stat. 11 (2003). In addition to the LSC Act, regulations, and appropriations legislation, other rules and instructions, governing LSC and its recipients, may be found in the Corporation's Program Letters, Audit Guide, Property Manual and formal legal opinions issued by the OLA. These documents are available to the public either online or upon request.

The LSC Act subjects the Corporation to both the Government in the Sunshine Act (5 U.S.C. 552b) and the Freedom of Information Act (5 U.S.C. 552). LSC's implementing regulations provide that meetings of the Board of Directors and of committees of the Board will be open to the public, except that certain meetings or portions thereof may be closed to the public as provided by law and regulation. See 45 CFR 1622.3 and 1622.5. LSC's FOIA regulations require that the Corporation make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. 45 CFR 1602.3. Thus, LSC maintains a public reading room at its offices and any person has the right to request LSC records in writing. The Corporation must release requested records to the requester unless they are protected from disclosure by the Freedom of Information Act (FOIA). Requests for records must be made in writing, with the envelope and the letter or the e-mail request clearly marked ''Freedom of Information Request.'' All such requests should be addressed to LSC's Office of Legal Affairs, 3333 K St., NW., 3rd Floor, Washington, DC 20007. In addition, LSC maintains a ''FOIA electronic reading room.'' For further information on this electronic reading room, please visit LSC online at *http://www.lsc.gov.*

Other information regarding LSC's staff, location, functions, rules of procedure, substantive rules, statements of general policy or how the public may obtain information, make submissions or requests will also be found on the LSC Web site, as will links to legal services providers across the country. In addition, information about the OIG can be found at *http://www.oig.lsc.gov.*

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 03–20222 Filed 8–7–03; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

National Crime Prevention and Privacy Compact; Approval of Amended Florida Proposal

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Notice of approval of amended Florida proposal.

SUMMARY: Pursuant to title 42, United States Code, section 14616, Article VI(e), and title 28, Code of Federal Regulations (CFR), chapter IX, the Compact Council, established by the National Crime Prevention and Privacy Compact, approved Florida's amended proposal to access the Interstate Identification Index (III) system on a delayed fingerprint submission basis when conducting criminal history record checks in connection with the temporary placement of children during exigent circumstances. The previously approved Florida proposal, published in **Federal Register** (FR) Notices at 66 FR 28004, dated May 21, 2001, provided for fingerprint submissions to the FBI within five working days of conducting III name-based checks. The approved amended proposal expands the ''five working days'' time frame to ''15 calendar days.''

In approving Florida's amended proposal, the Compact Council also considered information presented by States that were considering implementation of the previously approved proposal but were experiencing an inability to obtain and submit fingerprints within the then ''five working days'' time frame. Justifications for expanding the time frame included: Social service agencies' lack of automated systems to capture and forward fingerprints; remote geographic hindrances; and existing service contracts containing longer time frames for the capture of noncriminal justice fingerprints.

Those State and federal agencies previously authorized access to the III pursuant to 28 CFR 901.3, wishing to take advantage of the extended time frame, must submit new written applications to the FBI's Compact Officer. Other State and federal agencies may request similar III access by submitting written applications to the FBI's Compact Officer, agreeing to comply with requirements listed at 28 CFR 901.3. Such applications must explain why the submission of fingerprints contemporaneously with search requests is not feasible and also justify the length of the requested delay in the submission of such fingerprints.

Applications may be mailed to the FBI Criminal Justice Information Services Division, Attn: FBI Compact Officer, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Dated: July 15, 2003.

Wilbur Rehmann,

Chairman, Compact Council.

[FR Doc. 03–20218 Filed 8–7–03; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, and its Subdivisions.

DATE AND TIME:

August 13, 2003: 8:30 a.m.–5 p.m.

Concurrent Sessions:
8:30 a.m.–9:30 a.m. Open Session.
9:30 a.m.–11:30 a.m. Open Session.
12 Noon–12:20 p.m. Open Session.
12:20 p.m.–1 p.m. Closed Session.
1 p.m.–3 p.m. Open Session.
1 p.m.–1:15 p.m. Closed Session.
1:15 p.m.–3 p.m. Open Session.
2 p.m.–2:40 p.m. Closed Session.
2:40 p.m.–5 p.m. Open Session.

August 14, 2003: 8 a.m.–3:30 p.m.

Concurrent Sessions:
8 a.m.–9:15 a.m. Closed Session.
9:15 a.m.–10:30 a.m. Open Session.
8:30 a.m.–10:30a.m. Open Session.
10:30 a.m.–12 Noon Closed Session.
12:30 p.m.–3:30 p.m. Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb*.

FOR FURTHER INFORMATION CONTACT: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, August 13, 2003

Open

Task Force on S&E Workforce Policy (8:30 a.m.–9:30 a.m.) Room 1235.
- Approval of Minutes, May 21 and July 10.
- Discussion of comments from Board members on the revised draft report (NSB–03–69).
- Report on Comments Received.
- Publicity Plan and Schedule for the Final Report; Roll-out Event Options.
- Cover and Title.

Subcommittee on S&E Indicators (9:30 a.m.–11:30 a.m.) Room 1295.
- Approval of Minutes.
- S&E Indicators 2004 Overview Chapter.
- Distribution of the Orange Book for Agency Review.
- S&E Indicators 2004 Companion Piece.

Executive Committee (12 Noon–12:20 p.m.) Room 1295.
- Minutes.
- Welcome New Executive Officer.

Committee on Audit and Oversight (1:15 p.m.–3 p.m.) Room 1295.
- Minutes.
- Audit Update—KPMG.
- IG Act Anniversary.
- GAO Review of NSF Business Analysis Plan Contract.
- Cost-Sharing Policy Update.
- CFO Update.
- CIO Update.

Ad Hoc Task Group on Long-Lived Data Collections (1 p.m.–3 p.m.) Room 1240.
- Introduction of Contract Support.
- Presentations on Research Databases (BIO, GEO, MPS).
- Discussion: October Workshop.

Committee on Strategy and Budget (2:40 p.m.–5 p.m.) Room 1235.
- Draft Strategic Plan.
- Discussion: Report Required by Section 22 of the NSF Authorization Act.
- Introduction.
- S&E Workforce.
- Expanding Institutional Participation.
- S&E Research Infrastructure.
- Size and Duration of Grants.
- Overall Spending Recommendations.

Closed

Executive Committee (12:20 p.m.–1 p.m.) Room 1295.
- Director's Items.
- Specific Personnel Matters.
- Future Budgets.

Audit & Oversight (1 p.m.–1:15 p.m.) Room 1295.
- Presentation of OIG FY 2005 Budget.
- Briefing About Active Investigation.

Committee on Strategy & Budget (2 p.m.–2:40 p.m.) Room 1235.
- FY 2005 NSF Budget.
- FY 2005 NSB Budget.

Thursday, August 14, 2003

Open

Committee on Programs and Plans (9:15 a.m.–10:30 a.m.) Room 1235.
- Minutes/Announcements.
- Section 14 Authorization—Letter to Congress Regarding Delegation of Authority on Approval of MREFC Items.
- High Risk Research.
- Management of Large Computational Facilities.

• Long-Lived Data Collections: Status Report.

• Infrastructure Committee.

Committee on Education and Human Resources (8:30 a.m.–10:30 a.m.) Room 1295

Minutes

• Minutes.

• Comments from the Chair.

• Discussion: NWP Task Force Report.

• Reports from Working Groups (K–12, Undergraduate & Graduate).

• Report from Subcommittee on S&E Indicators.

• Focus on the Future: BIO 2010 (continued).

• Report from the August 12th Workshop on Broadening Participation.

• Report from the EHR AD.

• New Business.

Plenary Session of the Board (12:30 Noon–3:30 p.m.)

Room 1235

• Oath of Office.

• Minutes.

• Closed Items, October 2003.

• Chairman's Report.

• Director's Report.

• NSF Strategic Plan, 2003–2008.

• NWP Report.

• Multidisciplinary Data Initiative.

• Wireless Connectivity Update.

• Committee Reports.

Closed

Committee on Programs and Plans (8 a.m.–9:15 a.m.)

Room 1235

• Major Research Equipment & Facilities Construction.

• Report on Meeting of the MREFC Panel.

• New MREFC Projects.

Plenary Session of the Board (10:30 a.m.–12 Noon)

Room 1235

• Closed Minutes.

• Member Proposal.

• FY 2005 Budget.

• Closed Session Committee Reports.

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 03–20353 Filed 8–6–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413 and 50–414]

Duke Energy Corporation, North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc., Catawba Nuclear Station, Units 1 and 2; Exemption

1.0 Background

Duke Energy Corporation *et al.*, (the licensee) is the holder of Facility Operating License Nos. NPF–35 and NPF–52, which authorize operation of the Catawba Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in York County, South Carolina.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.46 and appendix K identify requirements for calculating emergency core cooling system (ECCS) performance for reactors containing fuel with Zircaloy or ZIRLO cladding, and 10 CFR 50.44 identifies requirements for the control of hydrogen gas generated in part from a metal-water reaction between the reactor coolant and reactor fuel having Zircaloy or ZIRLO cladding.

The licensee has requested, in its letter dated December 3, 2002, as supplemented by letter dated April 8, 2003, a temporary exemption to 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and appendix K to 10 CFR part 50, ''ECCS Evaluation Models,'' that would allow the Catawba Nuclear Station, Units 1 and 2 to operate using eight lead test assemblies (LTAs) with a tin composition that is nominally below the lower bound licensed limit of 0.80 percent, as specified in WCAP–12610–P–A, ''VANTAGE+ Fuel Assembly Reference Core Report,'' in non-limiting core locations. The purpose of the LTAs is to obtain data that would allow the optimization of ZIRLO corrosion resistance, in order to support improved fuel performance and reliability at increased burnup levels.

3.0 Discussion

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under section 50.12(a)(2), special circumstances include, among other things, when the application of the regulation would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.44, 10 CFR 50.46, and appendix K to 10 CFR part 50, is to establish requirements for the calculation of ECCS performance, and acceptance criteria for that performance, in order to assure that the ECCS functions to transfer heat from the reactor core following a loss-of-coolant-accident, such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented, and (2) clad metal-water reaction is limited to specified amounts.

The mechanical properties of the low-tin ZIRLO in the LTAs are very similar to those of the approved ZIRLO, since both of these alloys are zirconium-based materials with slight variations in tin content. The licensee will perform an evaluation of the fuel rod design using the same methods used for the current robust fuel assembly design. No new or altered design limits need to be applied, nor are any required for this program for the purposes of 10 CFR part 50, appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 10, ''Reactor Design'' (GDC 10). The licensee has evaluated the three areas of the mechanical design that could potentially be impacted by low-tin ZIRLO, namely, material properties, corrosion and thermal creep. The staff evaluated the data provided to substantiate that the material properties are similar to Zircaloy and that the corrosion and thermal creep will remain within established acceptance criteria. The NRC staff concludes that the data show that the selected LTA mechanical design will satisfy established acceptance criteria and should perform safely in the Catawba Nuclear Station.

The licensee has performed evaluations of the impact of the LTAs on the nuclear design. The approved reload methodologies can be used to model the LTAs since the features of the LTAs do not challenge the validity of the standard methodologies. The licensee has limited the number of LTAs to eight, and all of the LTAs will be placed in non-limiting locations in the

core. The licensee will use the approved reload methodologies for the Catawba Nuclear Station reload design containing the LTAs. Given the limited number of LTAs to be installed and the installation in non-limiting locations, the NRC staff concludes that the LTA core design is acceptable for use in the Catawba Nuclear Station.

10 CFR 50.46 identifies acceptance criteria for ECCS performance at nuclear power plants. The material properties of the low-tin ZIRLO are similar to those of the current ZIRLO cladding. Because the current analyses are done with material properties that approximate the low-tin ZIRLO properties, the current ECCS analysis remains applicable and unchanged for the LTAs. Therefore, the NRC staff concludes that the ECCS performance of the Catawba Nuclear Station will not be adversely affected by the insertion of eight low-tin ZIRLO LTAs. As such, the licensee has achieved the underlying purpose of 10 CFR 50.46. The staff has also concluded that should these LTAs fail, the consequences will be bounded by the current analyses for fuel failures and radiological assessments because the source term will not be affected by a different cladding material.

Paragraph I.A.5 of appendix K to 10 CFR part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of Zircaloy clad fuel, strict application of the rule would not permit use of the equation for determining acceptable fuel performance of advanced zirconium-based alloys. The underlying intent of this portion of the appendix, however, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. Due to the similarities in the chemical composition between the low-tin ZIRLO and ZIRLO, the application of the Baker-Just equation in the analysis of low-tin ZIRLO clad fuel will conservatively bound all post-LOCA scenarios. Thus, the underlying purpose of the rule will be met. Therefore, special circumstances exist to grant an exemption from appendix K to 10 CFR part 50 that would allow the licensee to apply the Baker-Just equation to low-tin ZIRLO.

The purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The hydrogen produced in a post-LOCA scenario comes from a metal-water reaction. Tests performed by Westinghouse on the low-tin ZIRLO alloy have demonstrated that the reduction in tin content will have no significant effect on current assessments of hydrogen gas production. As such, the licensee has met the underlying purpose of 10 CFR 50.44.

The NRC staff examined the licensee's rationale to support the exemption request and, for the reasons set forth above, concludes that allowing these eight LTAs with a nominally lower tin composition would meet the underlying purpose of 10 CFR 50.44, 10 CFR 50.46, and appendix K to 10 CFR part 50. Further, the NRC staff has determined that the reduction in tin content will have no significant effect on current assessments of a metal-water reaction, and that the mechanical design of the LTAs would perform satisfactorily. Therefore, ECCS performance will not be adversely affected and application of 10 CFR 50.44, 10 CFR 50.46 and 10 CFR part 50, appendix K, is not necessary to achieve their underlying purpose.

Based upon the considerations above, the NRC staff concludes that, pursuant to 10 CFR 50.12(a)(2), the granting of this exemption is acceptable.

4.0 Conclusion

For the reasons set forth above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Duke Energy Corporation an exemption from the requirements of 10 CFR part 50, section 50.44, section 50.46, and appendix K to 10 CFR part 50, with respect to the use of low-tin ZIRLO LTAs at the Catawba Nuclear Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 42136).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of August 2003.

For The Nuclear Regulatory Commission.

Herbert N. Berkow,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20240 Filed 8–7–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Employer Reporting.

(2) *Form(s) submitted:* AA–12, G–88A.1, G–88A.2, BA–6a, BA–6a (Internet).

(3) *OMB Number:* 3220–0005.

(4) *Expiration date of current OMB clearance:* 8/31/2004.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit, Individuals or Households.

(7) *Estimated annual number of respondents:* 495.

(8) *Total annual responses:* 3,418.

(9) *Total annual reporting hours:* 570.

(10) *Collection description:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and the amounts of benefits paid.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–20219 Filed 8–7–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 11, 2003:

Closed Meetings will be held on Tuesday, August 12, 2003 at 10 a.m. and Thursday, August 14, 2003 at 9 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, August 12, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Formal orders of investigation; and
Opinions.

The subject matter of the Closed Meeting scheduled for Thursday, August 14, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions; and
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: August 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20340 Filed 8–5–03; 4:25 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27707]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 4, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 29, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 29, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy, Inc., et al. (70–10152)

Xcel Energy, Inc. (''Xcel''), 800 Nicollet Mall, Minneapolis, Minnesota 55402, a holding company registered under the Act, and its wholly owned subsidiaries, NRG Energy, Inc. (''NRG'') and NRG Power Marketing, Inc. (''NRG PMI''), both of 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402–3265 (collectively, Xcel, NRG and NRG PMI are referred to as ''Applicants'' and NRG and NRG PMI are referred to as ''NRG Applicants'') file this application-declaration (''Application'') under sections 6(a), 7, 11(f), 11(g), 12(a), 12(b), 12(e), 12(f), and rules 44, 45, 54, 60, 62, 63, and 64 of the Act.

Applicants seek authorization from the Commission for the solicitation regarding the debtor's second amended joint plan of reorganization (''Plan'') under chapter 11 of the United States Bankruptcy Code (''Bankruptcy Code'').[1] Specifically, Applicants request authorization for the solicitation regarding the Plan [2] under sections 11(f) and 11(g) of the Act, and authorization under section 12(e) of the Act to solicit consents and approvals from the holders of the securities of the Debtors, along with other ancillary and related authorizations as are necessary to implement the Plan.

Applicants propose that the Commission issue: (1) An order under section 11(f) of the Act approving the Plan and certain related transactions under the Plan; [3] and (2) a report on the Plan under section 11(g) to accompany a solicitation of creditors and any other interest holders for approval of the Plan in the bankruptcy proceedings.[4]

I. Background

Xcel is a registered holding company that holds the securities of six public utility companies that serve electric and/or natural gas customers in twelve states.[5] These six utility subsidiaries (collectively, the ''Utility Subsidiaries'') are Northern States Power Company, a Minnesota corporation (''NSP–M''); Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado; Southwestern Public Service Company; Black Mountain Gas Company; and Cheyenne Light, Fuel and Power Company. As previously announced publicly, Xcel has entered into a contract to sell Black Mountain Gas Company.

Xcel also engages through subsidiaries in various other energy-related and nonutility businesses (collectively, ''Nonutility Subsidiaries''). The Nonutility Subsidiaries that are directly or indirectly owned by Xcel include: NRG; [6] Seren Innovations, Inc., a

[1] The Application includes the Plan and the third amended disclosure statement for debtors' second amended joint plan of reorganization pursuant to chapter 11 of the Bankruptcy Code (''Disclosure Statement'').

[2] On May 14, 2003 (''Petition Date''), NRG and certain of NRG's subsidiaries filed voluntary petitions for bankruptcy (''Bankruptcy Petition'') under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (''Bankruptcy Court''). NRG Applicants and certain of NRG's other subsidiaries which are debtors in such bankruptcy proceedings (''Debtors'').

[3] Section 11(f) of the Act provides, in relevant part, that ''a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court.''

[4] Section 11(g) of the Act provides, in relevant part, that any solicitation for consents to or authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be ''accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission.''

[5] The Utility Subsidiaries' service territories include portions of Arizona, Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming.

[6] In August 2000, Northern States Power Company merged with New Century Energies, Inc. to form Xcel. In March 2001, NRG completed a public offering of 18.4 million shares of its common stock. Following this offering, Xcel owned, indirectly through its subsidiary Xcel Energy Wholesale Group Inc. (''Xcel Wholesale''), a 74% interest in NRG's common stock and class A common stock, representing 96.7% of the total voting power of NRG's common stock and class A common stock. On June 31, 2002, Xcel, through

provider of cable, telephone and high-speed internet access systems and an exempt telecommunications company under section 34 of the Act; e prime, inc., a marketer of electricity and natural gas; and Eloigne Company, an investor in projects that qualify for low-income housing tax credits.

NRG is an energy company primarily engaged in the ownership and operation of power generation facilities and the sale of energy, capacity and related products in the United States and internationally. NRG PMI is the energy marketing subsidiary of NRG. NRG PMI provides a full range of energy management services for NRG's generation facilities in its Eastern and Central regions. The Bankruptcy Petition included the Plan, which incorporates the terms of the tentative settlement announced on March 26, 2003 among NRG, Xcel and members of NRG's major creditor constituencies that provides for payments by Xcel to NRG and its creditors of up to $752 million. A plan support agreement (''Plan Support Agreement'') reflecting the settlement has been signed by Xcel, NRG, holders of approximately 40 percent in principal amount of NRG's long-term notes and bonds, along with two NRG banks who serve as co-chairs of the global steering committee (''Global Steering Committee'') for the NRG bank lenders. The Plan Support Agreement will become fully effective upon execution by holders of approximately an additional ten percent in principal amount of NRG's long-term notes and bonds and by a majority of NRG bank lenders representing at least two-thirds in principal amount of NRG's bank debt.

II. The Plan of Reorganization

A. Overview of the Plan

Applicants request authorization for solicitation regarding the Plan under sections 11(f) and 11(g) of the Act, and authorization under section 12(e) to solicit consents and approvals from the holders of the securities of NRG, along with other ancillary and related authorizations to implement the Plan. The Plan submitted to the Bankruptcy Court by the Debtors is structured to: (i) Permit the Debtors to reorganize and emerge from bankruptcy; (ii) maximize the recovery of the Debtors' creditors on their capital investment; (iii) fix the exposure and/or commitment of Xcel to the Debtors and their creditors; and (iv) eliminate the direct and indirect equity ownership of Xcel in NRG and its subsidiaries. NRG believes that consummation of the Plan will best facilitate its business and financial restructuring and is in its best interests and in the best interests of its creditors and other parties in interest.

Applicants state that the purpose of the Plan is to provide NRG with a capital structure that can be supported by cash flows from operations. To this end, NRG will reduce its debt and reduce its annual interest payments. Applicants state that the Debtors believe that the reorganization contemplated by the Plan affords holders of claims the greatest opportunity for realization on the Debtors' assets and thus is in the best interests of such holders. If the Plan is not confirmed, the Debtors believe that they will be forced to either file an alternate plan of reorganization or liquidation under chapter 11 or liquidate under chapter 7 of the Bankruptcy Code. In either event, the Debtors believe that NRG's unsecured creditors (including the holders of public debt) would realize a less favorable distribution of value, or, in certain cases, none at all, for their claims. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the holders of claims.

Applicants state that upon implementation of the Plan, the ownership interests, direct and indirect, of Xcel in NRG and its subsidiaries will terminate. In addition, Xcel and its subsidiaries (other than NRG and its subsidiaries) (''Xcel Entities'') will have limited obligations going forward with respect to the Debtors. Xcel believes that Xcel's disaffiliation with the Debtors is beneficial to Xcel and its investors.

According to Applicants, NRG is restructuring its operations to become a domestic based owner-operator of a fuel-diverse portfolio of electric generation facilities engaged in the sale of energy, capacity and related products. NRG is working toward this goal by selective divestiture of non-core assets, consolidation of management, reorganization and redirection of power marketing philosophy and activities and an overall financial restructuring that will improve liquidity and reduce debt. NRG does not anticipate any new significant acquisitions or construction, and instead will focus on operational performance and asset management. NRG has already made significant reductions in expenditures, business development activities and personnel. Power sales, fuel procurement and risk management will remain a key strategic element of NRG's operations. NRG's objective will be to optimize the fuel input and the energy output of its facilities within an appropriate risk and liquidity profile. Despite NRG's focus on domestic electric generation, NRG will continue to hold international assets until it can optimize the divestiture of such assets.

B. Settlement Agreement

Applicants state that in connection with the implementation of the Plan, Xcel will enter into a settlement agreement (''Settlement Agreement'') with NRG. The Settlement Agreement constitutes the definitive documentation in respect of the settlement terms agreed to in the Plan Support Agreement. Under the Settlement Agreement and the Plan, Xcel will pay up to $752 million to NRG and its creditors to settle all claims of NRG against Xcel, including all claims under the Plan Support Agreement, and in return for releases of claims against Xcel from NRG, the other debtors in the Proceedings and NRG's creditors. The terms of the Settlement Agreement between NRG and Xcel require that the order of the Bankruptcy Court confirming the Plan provide that the right of any holder of an equity unit to acquire shares of Xcel common stock terminate as of the Petition Date.

Applicants state that, in general terms, the Settlement Agreement provides for the following: (i) Payment by Xcel of $250 million in exchange for the release of claims and causes of action which NRG may have in respect of the Plan Support Agreement; and (ii) payment by Xcel of up to $390 million (''Release-Based Amount'') in exchange for releases of Xcel and certain injunctions for the benefit of Xcel. In addition, under a Separate Bank Release Agreement between Xcel and the lenders under the NRG Credit Facilities, Xcel would agree to pay $112 million (''Separate Bank Settlement Payment'') for the benefit of the lenders under the NRG Credit Facilities in exchange for such lenders' release of claims against Xcel.

C. Treatment of Creditors Under the Plan

According to Applicants, the Plan generally classifies the creditors of, and other investors in, the NRG Applicants into several classes. In general terms, the Plan provides for the treatment of the creditors of the NRG Applicants, as follows:

(i) Holders of priority claims will receive payment in full;

(ii) Holders of unsecured claims against any NRG Applicant, which are

Xcel Wholesale, purchased through an exchange offer the 26 percent of NRG common stock held by the public so that it again held 100 percent ownership of NRG on December 31, 2002.

equal to or less than $50,000 or is reduced to $50,000 at the election of the holder of such claim, will receive cash in the amount of such claim;

(iii) Holders of secured claims against the NRG Applicants will receive either the collateral securing such claim or cash in an amount equal to the net proceeds realized upon the sale of such collateral, or as may otherwise be agreed upon by the Debtors and the claimant;

(iv) Each holder of NRG's unsecured debt and claims will receive its pro rata share of senior notes of Reorganized NRG,[7] common stock of Reorganized NRG, (''New NRG Common Stock'') and, if such holder makes the election on its ballot to release Xcel from claims or such holder is bound by a final order of the Bankruptcy Court to releases of claims against Xcel as provided in the Plan, equal to its pro rata share of the Release-Based Amount;

(v) Each of the holders of unsecured claims against NRG PMI will receive its pro rata share of senior notes of Reorganized NRG and New NRG Common Stock;

(vi) Intercompany claims among the Debtors and between the Debtors and certain of NRG's other subsidiaries will be divided into two classes: (1) Claims that will be cancelled without any distribution to the holders and (2) claims that will be reinstated on the Effective Date (as described below);

(vii) Any and all outstanding equity interests in NRG will be canceled without consideration; and

(viii) NRG will retain its 100% ownership in NRG PMI.

The Plan contains a mechanism that would allow holders of unsecured debt and claims against NRG and NRG PMI to elect to receive equity instead of cash and/or debt, or cash and/or debt instead of equity. Reallocation will occur to the extent there are willing parties on each side.[8]

Applicants state that, generally, the claims of the Xcel Entities against the Debtors would receive one of two different types of treatment under the Plan. As to claims of approximately $32 million arising prior to January 31, 2003, Xcel has agreed to settle such claims in exchange for a promissory note to be issued by NRG to Xcel in the original principal amount of $10 million (''Xcel Note''). The estimated recovery on account of such claims is approximately 31%.

According to Applicants, any intercompany claims of Xcel against NRG or any of its subsidiaries arising from the provision of intercompany goods or services after January 31, 2003, will be paid in full in cash in the ordinary course. Payments on Guarantees and indemnities made by Xcel after January 31, 2003, will be reimbursed in full by NRG on the effective date of the Plan (''Effective Date''). The ownership interests, direct and indirect, of Xcel in NRG and its subsidiaries will terminate. According to Applicants, the new stock and other securities to be issued by the NRG Applicants under the Plan are as follows:

(i) The New NRG Common Stock shall consist of 100,000,000 shares of new common stock, par value $0.01 per share. The New NRG Common Stock (subject to dilution for management incentive plan) will be distributed on a pro rata basis to holders of NRG's unsecured debt and claims and holders of unsecured claims against NRG PMI;

(ii) Reorganized NRG will also issue senior notes which shall (a) be in an initial principal amount of $500,000,000, (b) accrue interest at a rate of 10% per annum if payable in cash or 12% per annum if payable in kind, and (c) mature on the seventh anniversary of the issuance. The senior notes are to be distributed on a pro rata basis to holders of NRG's unsecured debt and claims and holders of unsecured claims against NRG PMI; and

(iii) The Xcel Note shall (a) be a non-amortizing promissory note in an initial principal amount of $10 million, (b) accrue interest at a rate of 3% per annum and (c) mature 2½ years after the effective date of the Plan.

D. Third Amended Disclosure Statement

The Plan was filed with the Bankruptcy Court along with the disclosure statement accompanying the Plan (''Disclosure Statement''). Applicants state that under section 1125 of the Bankruptcy Code, the Debtors may not solicit votes for acceptances of the Plan until the Bankruptcy Court approves the Disclosure Statement as containing information of a kind, and in sufficient detail, adequate to enable creditors to make an informed judgment whether to vote for acceptance or rejection of the Plan. According to Applicants, the Bankruptcy Court held a hearing on the Disclosure Statement on June 30, 2003, and is continuing its review of the Disclosure Statement.

Upon receipt of requisite approvals of the Disclosure Statement, the Debtors will solicit votes on the Plan. According to Applicants, the solicitation process is expected to take approximately 45 days. After the votes are cast, a confirmation hearing will be scheduled and notice of the hearing will be provided to creditors and parties-in-interest. Creditors and parties-in-interest will have an opportunity to object to the confirmation of the Plan at the confirmation hearing. At the confirmation hearing, the Bankruptcy Court must determine whether the confirmation of the Plan meets the requirements of section 1129 of the Bankruptcy Code. If the Bankruptcy Court determines that the Plan meets the requirements of section 1129, the Bankruptcy Court should confirm the Plan.

The Debtors may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the confirmation hearing, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel. The Debtors may alter, amend or modify any exhibits to the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the confirmation hearing, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel. After the confirmation of the Plan by the Bankruptcy Court, and prior to substantial consummation of the Plan with respect to any Debtor as defined in section 1102 of the Bankruptcy Code, any Debtor may, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the confirmation order, and such matters as may be necessary to carry out the purposes and effects of the Plan. A holder of a claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the claim of such holder. Applicants state that modification of or amendments to the Plan will be promptly filed with the Commission by amendment to the Application.

III. Obligations of Xcel Under the Plan and the Settlement Agreement

Applicants also state that under the Settlement Agreement, Xcel and NRG

[7] Reorganized NRG refers to NRG, or any successor thereto by merger, consolidation or otherwise, as contemplated by the Plan.

[8] The reallocation procedure is completely voluntary, and no party can be required or compelled to take part in the reallocation procedure. Creditors who do not participate in the reallocation procedure will receive the distribution to which they are otherwise entitled under the distribution provisions of the Plan.

(on behalf of itself and NRG's subsidiaries) will agree to indemnify each other for any actions taken by the indemnifying party through the effective date of the Plan where the statutory liability imposed on the indemnified party is solely by reason of Xcel's direct or indirect ownership of NRG and NRG's subsidiaries. Further, according to Applicants, NRG and its direct and indirect subsidiaries will not be reconsolidated with Xcel or any of its other affiliates for federal income tax purposes at any time after their March 2001 disaffiliation or otherwise entitled to the benefits of any tax sharing agreement with Xcel. Xcel alone will be entitled to the tax benefits associated with the worthless stock deduction Xcel expects to claim with respect to its investment in NRG. Xcel and NRG will enter into a tax matters agreement (''Tax Matters Agreement'') that addresses liability for any unpaid taxes of NRG and Xcel for periods during which NRG and Xcel were part of the same consolidated, combined or unitary tax group, entitlement to any tax refunds for such periods, the control of contests for such periods, cooperation with respect to audits and such other matters as would be customary in a tax matters agreement between similarly-situated corporations.

Applicants state that Xcel has agreed, to the extent requested by NRG, to provide services to NRG under a transitional services agreement (''Transitional Services Agreement'') for a specified period after the Effective Date. Xcel will receive compensation at cost for any services provided. Applicants state that at this time it is not expected that NRG will request any services under the Transitional Services Agreement.

Xcel and NRG will enter into an employee matters agreement under which various obligations with respect to employees and benefit plans will be allocated between Xcel and NRG as of the effective date of the Plan. Also, a tax allocation agreement (''Tax Allocation Agreement''), dated as of December 29, 2000, provided for all eligible affiliated corporations to join with Xcel in the filing of consolidated federal income tax returns, and also set forth procedures for allocating tax benefits among the parties. NRG and its direct and indirect subsidiaries will not be reconsolidated with Xcel or any of its other affiliates for federal income tax purposes at any time after their March 2001 disaffiliation or otherwise entitled to the benefits of the Tax Allocation Agreement. Applicants further state that Xcel's obligations under the Settlement Agreement and the Plan, including its obligations to make the payments discussed above, will, according to Applicants, be contingent upon, among other things, the following:

(i) Effective date of the Plan occurring on or prior to December 15, 2003;

(ii) The receipt of releases in favor of Xcel from holders of at least 85 percent of the general unsecured claims held by NRG's creditors;

(iii) Approval of the final Plan by the Bankruptcy Court and related documents containing terms satisfactory to Xcel, NRG and various groups of NRG's creditors; and

(iv) The receipt by Xcel of all necessary regulatory approvals.

Applicants assert that the Plan and related transactions are reasonable and in the best interests of the investors in the NRG Applicants and of the investors in Xcel.

IV. Post Reorganization Ownership Structure

Under the Plan, the pre-petition shares of common stock issued by NRG and held indirectly by Xcel, through Xcel Wholesale, shall not receive any distributions under the Plan, and the Post shares shall be canceled and extinguished on the effective date of the Plan. As a consequence, Xcel's pre-petition shares in NRG will no longer have any claim to voting rights, dividends or any other rights with respect to NRG. The entire equity interest in Reorganized NRG will then be held by the existing creditors of NRG. NRG will continue to own 100% of the equity ownership of NRG PMI.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20262 Filed 8–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48281]

Broker-Dealer Financial Statement Requirements Under Section 17 of the Exchange Act

August 4, 2003.

Section 17(e)(1)(A) of the Securities Exchange Act of 1934 (''Exchange Act'') requires that every registered broker-dealer annually file with the Commission a certified balance sheet and income statement, and section 17(e)(1)(B) requires that the broker-dealer annually send to its customers its ''certified balance sheet.'' [1] The Sarbanes-Oxley Act of 2002 (''Act'') [2] established the Public Company Accounting Oversight Board (''Board'') [3] and amended section 17(e) to replace the words ''an independent public accountant'' with ''a registered public accounting firm.'' [4]

The Act establishes a deadline for registration with the Board of auditors of financial statements of ''issuers,'' as that term is defined in the Act.[5] The Act does not provide a deadline for registration of auditors of broker-dealers that are not issuers (''non-public broker-dealers''). Application of registration requirements and procedures to auditors of non-public broker-dealers is still being considered.

Accordingly, we believe that it is consistent with the public interest and the protection of investors that non-public broker-dealers file with the Commission and send to their customers the documents and information required by section 17(e) certified by an independent public accountant instead of a registered public accounting firm until January 1, 2005, unless rules are in place regarding Board registration of auditors of non-public broker-dealers that set an earlier date.[6]

It is therefore ordered, pursuant to section 17(e) of the Exchange Act, that non-public broker-dealers may file with the Commission a balance sheet and income statement and may send to their customers a balance sheet certified by an independent public accountant instead of certified by a registered public accounting firm until January 1, 2005, unless rules are in place regarding Board registration of auditors of non-public broker-dealers that set an earlier date.

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[1] Exchange Act Rule 17a–5 requires registered broker-dealers to provide to the Commission and to customers of the broker-dealer other specified financial information.

[2] Public Law 107–204.

[3] Section 101 of the Act.

[4] Section 205(c)(2) of the Act.

[5] Section 2 of the Act defines ''issuer.'' Section 102 of the Act establishes a specific deadline by which auditors of issuers must register with the Board. Based on the statutory deadline of 180 days after the Commission determined the Board was ready to carry out the requirements of the Act, that date is October 22, 2003. *See* Exchange Act Release No. 48180 (July 16, 2003).

[6] We note the continued applicability of Exchange Act Rule 17a–5. We wish to highlight Exchange Act Rule 17a–5(g), which requires, among other things, that audits of broker-dealers be made in accordance with generally accepted auditing standards (GAAS). GAAS requires, for example, that audits be conducted with due professional care by independent persons with adequate technical training and proficiency as an auditor.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20221 Filed 8–7–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P012]

State of Florida

As a result of the President's major disaster declaration for Public Assistance on July 29, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Charlotte, Citrus, DeSoto, Hardee, Levy, Manatee and Sarasota Counties in the State of Florida constitute a disaster area due to damages caused by severe storms and flooding occurring on June 13, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 29, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage	
Non-Profit Organizations Without Credit Available Elsewhere	2.953
Non-Profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P01211.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: July 31, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–20257 Filed 8–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512]

State of West Virginia; Amendment #7

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 30, 2003, the above numbered declaration is hereby amended to include Marion County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides beginning on June 11, 2003 and continuing through July 15, 2003.

All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–20256 Filed 8–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 42 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2004, subject to the availability of funds. Fourteen states do not participate in the EO 12372 process therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481.

Dr. Bruce Whitaker, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–9155.

Mr. John Lenti, State Director, University of South Carolina, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3864.

Mr. Henry Turner, Executive Director, Howard University, 2600 6th St., NW, Room 125, Washington, DC 20059, (202) 806–1550.

Mr. Jerry Cartwright, State Director, University of West Florida, 401 East Chase Street, Suite 100, Pensacola, FL 32501, (850) 595–6060.

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762.

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515.

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.

Mr. Albert Laabs, State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324, Nashville, TN 37217–2833, (615) 366–3931.

Ms. Debbie Bishop Trocha, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204, (317) 234–2086.

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–4879.

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219.

Mr. Robert Hamlin, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111.

Mr. John Lenti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Mr. Mark Slade, Acting State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 367–5757.

Ms. Vi Pham, Region Director, California State University, Fullerton, 2600 Nutwood Avenue, Suite 275,

Fullerton, CA 92831–3137, (562) 419–3099.
Ms. Mary Wylie, Region Director, Southwestern Community College District, 900 Otey Lakes Road, Chula Vista, CA 91910, (619) 482–6375.
Mr. John Massaua, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420.
Ms. Carolyn Clark, State Director, Washington State University, 534 East Trent Avenue, Spokane, WA 99210–1495, (509) 358–7765.
Mr. Scott Daughtery, State Director, University of North Carolina, 5 West Hargett Street, Suite 600, Raleigh, NC 27601–1348, (919) 715–7272.
Ms. Christine Martin, State Director, University of North Dakota, P.O. Box 7308, Grand Forks, ND 58202, (701) 777–3700.
Mr. Casey Jeszenka, Director, University of Guam, P.O. Box 5061–U.O.G. Station, Mangilao, Guam 96923, (671) 735–2553.
Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–7794.
Ms. Helen Sullivan, Region Director, University of California, Merced, 550 East Shaw, Suite 105A, Fresno, CA 93710, (559) 241–7414.
Ms. Janice Rhodd, Region Director, California State University, Chico Research Foundation, Kendall Hall, Room 114, Chico, CA 95929–0870, (530) 898–4598.
Mr. Blake Escudier, Region Director, San Jose State University, 210 North 4th Street, 4th Floor, P.O. Box 720130, San Jose, CA 95129, (408) 655–9487.
Dr. Michael Fronmueller, Region Director, California State University, Northridge, 18111 Nordhoff Street, Northridge, CA 91330–8232, (818) 677–2455.

FOR FURTHER INFORMATION CONTACT: Bridget Bean, Acting Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with the SBA. SBDCs operate on the basis of a state plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) increase economic growth;

(c) assist more small businesses; and

(d) broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) maintain lists of private consultants at each service center.

Dated: July 29, 2003.

Bridget Bean,

Acting Associate Administrator for Small Business Development Centers.

[FR Doc. 03–20258 Filed 8–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4437]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dawn of Photography: French Daguerreotypes, 1839–1855''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Dawn of Photography: French Daguerreotypes, 1839–1855,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art from on or about September 22, 2003 until on or about January 4, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 31, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–20311 Filed 8–7–03; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice: 4436]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Shamil Basayev

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that Shamil Basayev [Date of Birth: 1/14/1965, Place of Birth: Chechen village of Dyshni-Vedeno] has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 4, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–20310 Filed 8–7–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4406]

Defense Trade Advisory Group Notice of Open Meeting

AGENCY: Department of State.

ACTION: Notice.

The Defense Trade Advisory Group (DTAG) will meet in open session from 9 a.m. to 12 noon on Thursday, September 18, 2003, in Room 1912 at the U.S. Department of State, Harry S. Truman Building, 2201 C Street NW., Washington, DC. Entry and registration will begin at 8:15. The membership of this advisory committee consists of private sector defense trade specialists, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to review progress of the working groups and to discuss current defense trade issues and topics for further study.

Although public seating will be limited due to the size of the conference room, members of the public may attend this open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Wednesday, September 10, 2003. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the September 18 plenary.

Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide his/her name, company or organizational affiliation, phone number, date of birth, social security number, and citizenship to the DTAG Secretariat, contact person Barbara Eisenbeiss via e-mail at *EisenbeissBK@state.gov.* DTAG members planning to attend the plenary session should notify the DTAG Secretariat, contact person Mary Sweeney via e-mail at *SweeneyMF@state.gov.* A list will be made up for Diplomatic Security and the Reception Desk at the C Street Entrance. Attendees must present a driver's license with photo, a passport, a U.S. Government ID, or other valid photo ID for entry.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, DTAG Secretariat, U.S. Department of State, Office of Defense Trade Controls Management (PM/DTCM), Room 1200, SA–1, Washington, D.C. 20522–0112, (202) 663–2865, FAX (202) 663–261–8199.

Dated: August 1, 2003.

Michael T. Dixon,

Executive Secretary, Defense Trade Advisory Group, Department of State.

[FR Doc. 03–20309 Filed 8–7–03; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15745]

High Density Airports; Notice of Reagan Washington National Airport Lottery Allocation Procedures

AGENCY: Federal Aviation Administration.

ACTION: Notice rescheduling the date of the lottery to allocate slots at Reagan Washington National Airport.

SUMMARY: This action reschedules the Federal Aviation Administration (FAA) lottery for the allocation of limited air carrier and commuter slots at Reagan Washington National Airport (DCA). The lottery was originally scheduled for July 31, 2003, and is rescheduled for August 12, 2003.

DATES: July 31, 2003.

Date/Location of Lottery: The lottery will be held in the Federal Aviation Administration (FAA) Auditorium, 3rd floor, 800 Independence Avenue, SW., Washington, DC 20591, on August 12, 2003, beginning at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3134.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the FAA published in the **Federal Register** a notice of lottery and allocation procedures for a limited number of air carrier and commuter slots at DCA (68 FR 41037). A clarification regarding the applicable regulatory definition of a limited incumbent carrier was published on July 18, 2003 (68 FR 42796).

The FAA has received comments and questions regarding the lottery procedures and the application of the regulatory definitions of a new entrant carrier and a limited incumbent carrier for this lottery. Copies of documents related to the lottery, including submissions from the carriers requesting to participate in the lottery and letters regarding certain lottery procedures and carrier eligibility questions, have been placed in the docket for this matter, FAA–2003–15745. On July 24, 2003, the FAA notified carriers operating at DCA and other interested parties of the open docket and provided that if any party sought to comment on the lottery or any issues raised by the documents in the

docket, it should do so by 12 p.m. on July 28, 2003.

We have reviewed the comments in the docket and find that several issues regarding carrier eligibility to participate and the lottery procedures have been raised. The FAA finds it necessary to delay the lottery for a short period of time to properly resolve these concerns. The FAA will issue a subsequent notice in the **Federal Register** that responds to the comments and lists the carriers eligible to participate in the lottery and their respective category of participation.

This notice does not reopen the notification deadline for carriers not operating at DCA to request participation in the lottery.

Issued on July 31, 2003, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 03–20192 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Designate as Abandoned Certain Type Certificates Issued in the Restricted Category: International Helicopters, H5S0; Smith Helicopters, H8NM; Invest In Opportunities, Inc., H9WE; Helitech Corporation, H12WE; Pacific Aviation, H15WE; Joe G. Marrs, H2SO; Glacier Helicopter, Inc., H21NM; Charles D. Linza, H4WE; Sterling Aircraft Industries, H7WE; Heli Crane Corporation, HR–35; Lassen Air, H11WE; U.S. Helicopter, R00009AT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to designate certain type certificates issued in the restricted category as abandoned; request for comments.

SUMMARY: This notice announces the FAA's intent to designate each of the above-cited Type Certificates issued in the Restricted Category (RCTC) as abandoned. The FAA has been unable to locate these RCTC holders concerning the continued airworthiness of the aircraft certificated under their type certificates. The Federal Aviation Regulations (FARs) require that type certificate (TC) holders report certain failures, malfunctions, and defects to the FAA. The FARs also require, upon request, that TC holders submit design changes to the FAA that are necessary to correct any unsafe condition in their products. The FAA has been unsuccessful in its attempt to contact each of the above listed TC holders by certified mail, by telephone, and Internet search. The FAA is responsible for surveillance of the RCTC holder's ability to perform continued operational safety (COS) management and oversight of each helicopter on their TC. This action is intended to ensure that each individual RCTCed helicopter is under a TC that has active COS management and oversight by a TC holder that can be subject to periodic safety audits by the FAA.

DATES: Comments must be received on or before October 7, 2003.

ADDRESSES: Comments on this notice must be submitted to the Federal Aviation Administration, Safety Management Group, ASW–112, Rotorcraft Directorate, Fort Worth, Texas 76193–0112 or electronically to *Charles.C.Harrison@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0112, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This notice is intended to inform the public of the FAA's intent to designate certain Type Certificates issued in the Restricted Category as being abandoned and that no additional original airworthiness certificates will be issued against these type certificates (TC) designated as abandoned. The FAA has been unable to locate these TC holders concerning the continued airworthiness of the aircraft certificated under their type certificates. Among other regulatory requirements, 14 CFR 21.3 requires TC holders to report certain failures, malfunctions, and defects to the FAA; and 14 CFR 21.99 requires, upon request, that TC holders submit design changes that are necessary to correct any unsafe condition in their products. To date, the FAA has been unsuccessful in its attempts to locate each of the above listed TC holders by certified mail, by telephone, and Internet search. The FAA is responsible for surveillance of the RCTC holder's ability to perform continued operational safety (COS) management and oversight of each helicopter on their TC. This action is *not* intended as a surrender, suspension, revocation, or termination of any TC as those terms are used in 14 CFR part 21. However, this action is intended to ensure that each individual RCTCed helicopter is under a TC that has active COS management and oversight by a TC holder that can be subject to periodic safety audits by the FAA. Periodic safety audits that the FAA performs on these TC holder's compliance with the FAA safety regulations relating to continued airworthiness of their helicopters cannot be accomplished if they cannot be located.

Interested parties are invited to provide comments, written data, views, or arguments relating to this notice. Comments should be submitted in duplicate to the address specified above. All comments received on or before the closing date will be considered. All comments received will be available in the docket for examination by interested persons. Comments may be inspected at the office of the FAA, Rotorcraft Safety Management Group, Rotorcraft Directorate, 4th Floor, 2601 Meacham Boulevard, Fort Worth, Texas, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Background: Since the issuance of many of the RCTC's, there have been a large number of significant service difficulties that have been discovered on various models of surplus military aircraft certificated in the restricted category, particularly under 14 CFR 21.25. Some of these service difficulties have resulted in fatalities and led to the discovery of various continued operational safety problems in this fleet. Based on the numbers of significant service difficulties that are being discovered in the RCTC helicopter fleet, the FAA conducted an audit of the records of all known RCTC holders.

As part of this audit, the FAA elevated its efforts to contact and review all of the RCTC holders for up-to-date information on their RCTC including the number of helicopters, the serial numbers (S/N), and the operators of those helicopters. This effort has revealed that there are helicopters listed on the FAA Aircraft Registry for which there is no COS management and oversight by the TC holder. The audit also revealed that there are many RCTC's that have been sold and not properly transferred to the new owner. Contacts with some RCTC holders also revealed that there were some certificates that were intentionally not managed for various reasons, however the RCTC was not surrendered. As part of the audit, the FAA also discovered that several RCTC holders could not be located and in some cases there were no active aircraft listed in the FAA Registry for certain RCTC's and in other cases there are active aircraft listed in the FAA Registry. The FAA attempted to contact and locate all of these RCTC holders by phone, certified letter, and Internet search. Several RCTC holders could not be located and have never

contacted the FAA after obtaining the TC for their aircraft.

Discussion: The basis for issuance of a TC for a Restricted Category helicopter not only includes various reports and data, it requires that the applicant submit information about periodic inspections and maintenance to assure the continued operational safety of the helicopter. These TC holders are also required to meet certain COS requirements regardless of who owns or operates the aircraft. The FAA continues to monitor the safety performance of a helicopter design even after the type design is approved and the aircraft is introduced into service. This is accomplished through post-certification design reviews, various safety reports and data, discussions with operators, and reports from the TC holder.

COS oversight and management is a safety requirement for every individual helicopter. This action is part of the FAA's continuing effort to oversee TC holder COS management of the aircraft on their TCs issued in the restricted category and to provide current information to the public as to the status of these TCs.

The COS responsibilities of aircraft certificated by the FAA require that the TC holder remain in contact with all owners and operators of their aircraft in order to meet their regulatory safety obligations. For example, 14 CFR 21.3 requires that the TC holder report certain failures, malfunctions, or defects to the FAA within 24 hours after it has been determined to be a reportable occurrence. That regulation also requires that if action is required to correct the defect, the data necessary for the issuance of an appropriate airworthiness directive shall also be submitted. In addition, the regulations make it clear that Instructions for Continuing Airworthiness, as well as appropriate approved design changes to a type-certificated aircraft that will contribute to the safety of a product, shall be made available to all owners and operators of that product.

Since several TC holders cannot be located or contacted, the FAA cannot perform its auditing oversight function and determine whether the TC holder is in compliance with the regulatory requirements. Therefore, the TC holders that can not be located and are not properly managing the COS aspects of the helicopters listed on their TC are in default of their FAA regulatory obligations. Hence, the FAA proposes to ''flag'' their TC and consider it abandoned. This notice is intended as notification to the public that the FAA intends to designate those TCs as abandoned and no additional original airworthiness certificates will be issued against these TCs designated as abandoned. There are FAA procedures in place to accommodate the transfer or surrender of a TC.

To properly transfer a TC, FAA order 8110.4B, dated April 24, 2000, and 14 CFR 21.47 requires that the grantor, within thirty (30) days after the transfer of the TC, shall notify in writing the appropriate FAA Aircraft Certification Office. This notification must state the name and address of the transferee or licensee, date of the transaction, and in the case of a licensing agreement, the extent of authority granted the licensee. The recipient of a transferred TC accedes to all the privileges and all the responsibilities of the transferring TC holder, which includes the continued airworthiness responsibilities for all aircraft covered by that TC. Also, when a TC is transferred, FAA Order 8110.4B, dated April 24, 2000, states that the TC will be reissued. The proper procedures for transferring a TC are contained in FAA Order 8110.4B, dated April 24, 2000.

The surrender of a TC for cancellation renders it ineffective. Upon surrender of a TC for cancellation, all associated privileges, such as those stated in 14 CFR 21.45, are extinguished. If a TC is surrendered for cancellation, no further aircraft may be placed on the TC. However, the TC surrender does not affect adversely the *eligibility* of any aircraft to seek conformity to another TC or eligibility for issuance of an airworthiness certificate if conformity can be established. To be airworthy, an aircraft must conform to its TC (or Supplemental Type Certificate), including its approved type design and applicable airworthiness directives, and must be in a condition for safe operation (49 USC 44704(d); 14 CFR 21.41).

In order to meet the COS requirements of the FAA regulations, any owner or operator of a helicopter certificated under any of the cited type certificates that the FAA designates as abandoned, is encouraged to apply for their own type certificate in accordance with the applicable FAA Regulations or they may, with concurrence from another TC holder, conform their helicopter to that TC and add it to that COS-managed TC.

Dated: Issued in Fort Worth, Texas on July 23, 2003.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–19527 Filed 8–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34383]

Fremont Northwestern Railroad Company—Lease and Operation Exemption—Rail Line of the Eastern Nebraska Chapter National Railway Historical Society

Fremont Northwestern Railroad Company (FNW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate a 9.5-mile rail line owned by the Eastern Nebraska Chapter National Railway Historical Society (ENC) extending from milepost 0.69, a point of connection with a rail line of Union Pacific Railroad Company in Freemont, to milepost 10.01, a point 2 miles north of Nickerson, in Dodge County, NE. FNW certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

FNW states that an agreement with ENC was reached on July 15, 2003, wherein FNW was given exclusive rights to provide freight service on the line. The line is currently being used only for tourist passenger train service that is operated by the Fremont & Elkhorn Valley Railroad (FEVR),[1] a tourist/museum carrier. FEVR will have no freight rights or freight responsibilities on the line.

The transaction was due to be consummated on or after July 29, 2003, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34383, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Lee Wilmart, President, Fremont Northwestern Railroad Company, P.O. Box 185, Fremont, NE 68026–0185.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: August 1, 2003.

[1] FEVR is a wholly owned subsidiary of ENC.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–20284 Filed 8–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Enrollment Program Advisory Committee

AGENCY: Internal Revenue Service, (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Director of the Office of Professional Responsibility invites individuals and organizations to nominate candidates for membership on the Enrollment Program Advisory Committee. As of January 8, 2003, the newly created Office of Professional Responsibility replaced the former Office of the Director of Practice. The Director of the Office of Professional Responsibility exercises the authority of the former Director of Practice.

DATES: Submit nominations on or before September 15, 2003.

ADDRESSES: Mail or fax nominations to: Internal Revenue Service; Office of the Director of Professional Responsibility; SE:OPR, Attn: Michael Hahn, 1111 Constitution Ave., NW., Washington, DC 20224; fax number 202–694–1919.

FOR FURTHER INFORMATION CONTACT: Michael Hahn, Enrollment Program Advisory Committee, at 202–694–1823.

SUPPLEMENTARY INFORMATION: The Enrollment Program Advisory Committee (''EPAC''), which was formerly known as the ''Special Enrollment Examination Advisory Committee,'' was established in 1999 under the terms of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App. The EPAC's charter expires January 16, 2005. It is expected that the EPAC will be renewed for another two-year period. Therefore, the Director of the Office of Professional Responsibility invites individuals and organizations to nominate candidates for membership.

Section 330 of 31 U.S.C. authorizes the Secretary of the Treasury to require that representatives before the Department demonstrate their ''competency to advise and assist persons in presenting their cases.'' Pursuant to that statute, the Secretary has promulgated the regulations governing practice before the IRS, which are found at 31 CFR part 10, and are separately published in pamphlet form as Treasury Department Circular No. 230 (to order call 1–800–829–3676).

The regulations provide that enrolled agents are among the classes of individuals eligible to practice before the IRS. The Director of the Office of Professional Responsibility is also authorized to pass upon applications for enrollment and to grant enrollment to applicants who demonstrate special competence in tax matters by written examination administered by the IRS. This written examination is the Special Enrollment Examination (''SEE''). More information concerning the SEE may be found on the Office of Professional Responsibility Web page: (1) Go to IRS Digital Daily, *http://www.irs.gov;* (2) click Tax Professional; and (3) click Enrolled Agents.

The objective of the EPAC is to advise, with respect to annual examinations testing the special competence in Federal tax matters of individuals who intend to apply for status as ''enrolled agents,'' eligible to practice before the IRS. In meeting this objective, non-Federal members of the EPAC shall represent the various segments of the tax practitioner community. The EPAC's advisory functions will include, but will not necessarily be limited to: (1) Identifying Federal tax services sought by taxpayers, identifying the knowledge that would permit enrolled agents to provide such services, and developing examination topics and questions that will test for such knowledge; (2) recommending completed examinations for use in the SEE Program; and (3) reviewing the work product of any organization authorized by contract or otherwise to write, compile, administer and grade the SEE, report the scores to SEE candidates, and provide advice thereon to the Director.

FACA mandates that the membership of the Committee be fairly balanced in terms of the points of view presented and the functions to be performed. To that end, the Office of Professional Responsibility will consider nominations of all individuals who: (1) Are qualified to represent the views of a segment of the tax practitioner community; (2) possess professional or academic accomplishments sufficient to allow contributions to the EPAC's advisory functions; (3) are of good character and good reputation; and (4) are in compliance with the Federal tax laws. Current or former status as an enrolled agent is not a requirement for EPAC membership.

Individuals may nominate themselves; an individual may nominate other individuals; or professional associations or other organizations may nominate individuals. A nomination may be in any format, but it must include: (1) A statement of which segment of the tax practitioner community the nominee is qualified to represent; (2) a description of the nominee's professional accomplishments, academic accomplishments, or both; and (3) a statement that the nominee is willing to accept an appointment to the EPAC. Nominations may include copies of articles from professional journals or other relevant publications, but such items cannot be returned.

Appointment to the Committee will be for a two-year term, providing that a member continues to fulfill his or her Committee responsibilities. The Committee is expected to meet up to four times a year. Members should be prepared to devote from 125 to 175 hours per year, including meetings, to the Committee's work. Members will be reimbursed, in accordance with Government regulations, for expenses (transportation, meals, and lodging) incurred in connection with Committee meetings.

If the SEE is to provide objective and fair indicia of special competence in Federal taxation, the SEE's specific topics and questions must not become publicly available prior to administration of the examination. Consequently, sessions of EPAC meetings dealing with specific SEE topics and questions will be closed to public participation. With respect to such closed sessions, EPAC members must be prepared to maintain the confidentiality of their deliberations and advice.

Dated: August 1, 2003.

Brien T. Downing,

Director, Office of Professional Responsibility.

[FR Doc. 03–20291 Filed 8–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Enrollment Program Advisory Committee

AGENCY: Internal Revenue Service, (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Director of the Office of Professional Responsibility gives notice of the renewal of the Enrollment Program Advisory Committee. As of January 8, 2003, the newly created Office of Professional Responsibility replaced the former Office of the Director of Practice. The Director of the

Office of Professional Responsibility exercises the authority of the former Director of Practice.

FOR FURTHER INFORMATION CONTACT: Michael Hahn, Enrollment Program Advisory Committee, 202–694–1823.

SUPPLEMENTARY INFORMATION: In accordance with 41 CFR 101–6.1015(a)(1), the Director of the Office of Professional Responsibility hereby gives notice of the renewal of the Enrollment Program Advisory Committee (''EPAC''), which was formerly known as the ''Special Enrollment Examination Advisory Committee.'' The EPAC has been renewed under the authority of section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App.

Section 330 of 31 U.S.C. authorizes the Secretary of the Treasury to require that representatives before the Department demonstrate their ''competency to advise and assist persons in presenting their cases.'' Pursuant to that statute, the Secretary has promulgated the regulations governing practice before the IRS, which are found at 31 CFR part 10, and are separately published in pamphlet form as Treasury Department Circular No. 230 (to order call 1–800–829–3676).

The regulations provide that enrolled agents are among the classes of individuals eligible to practice before the IRS. The Director of the Office of Professional Responsibility is also authorized to pass upon applications for enrollment and to grant enrollment to applicants who demonstrate special competence in tax matters by written examination administered by the IRS. This written examination is the Special Enrollment Examination (SEE).

The primary purpose of the Committee is to advise the Office of Professional Responsibility on the SEE. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Identifying Federal tax services sought by taxpayers, identifying the knowledge that would permit enrolled agents to provide such services, and developing examination topics and questions that will test for such knowledge; (2) recommending completed examinations for use—in the SEE Program; and (3) reviewing the work product of any organization authorized by contract or otherwise to write, compile, administer and grade the SEE, report the scores to SEE candidates, and provide advice thereon to the Director.

Dated: August 1, 2003.

Brien T. Downing,

Director, Office of Professional Responsibility.

[FR Doc. 03–20292 Filed 8–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Savings Bonds.

DATES: Written comments should be received on or before October 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2362, 2378, and 2383.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,300,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 21,667.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 4, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–20233 Filed 8–7–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Draft National Capital Asset Realignment for Enhanced Services (CARES) Plan

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document concerns VA's health care planning process known as CARES, or Capital Asset Realignment for Enhanced Services. The CARES process was designed to enable the veterans health care system to more effectively use its resources to deliver more care, to more veterans, in places where veterans need it most. We are providing interested persons the opportunity to review and submit written comments to the independent CARES Commission concerning the draft National CARES Plan of the Under Secretary for Health.

DATES: Comments may be submitted until further notice is published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to Richard E. Larson, Executive Director, CARES Commission, 00CARES, 810 Vermont Avenue, NW., Washington, DC 20480; or faxed to (202) 501–2196; or e-mail to *http://www.carescommission.va.gov.* Comments should indicate that they are submitted in response to the ''Notice; Draft National Capital Asset Realignment for Enhanced Services (CARES) Plan.''

FOR FURTHER INFORMATION CONTACT: Janice R. Sloan, CARES Commission, at (202) 501–2000.

SUPPLEMENTARY INFORMATION: VA's mission to provide quality health care for America's veterans has not changed since its inception. But how that care is provided—at what kind of facilities, where they are located and which types of procedures are used—has been subject to dynamic change. Medical advances, modern health care trends, and veteran migrations all have an impact on the medical care landscape. In a dynamic health care environment, VA must plan to embrace change so it can best serve veterans health care needs in the future.

The draft National CARES Plan embodies the plan for managing a vital element of that change: The Department's capital infrastructure. The plan is based on a systematic, national assessment of the future needs of veterans and the present location and condition of the physical plant that delivers their health care. The draft National CARES Plan identifies gaps where there is an imbalance between current infrastructure and future needs. It then makes recommendations to solve these imbalances and assure that VA is best positioned to meet veterans health care needs into the future.

The draft Plan incorporates new community-based primary and specialty outpatient clinics. Additionally, four new Spinal Cord Injury and Disorders Units have been proposed, along with two new Blind Rehabilitation Centers. Other enhancements include expansion of numerous existing outpatient clinics, renovations of inpatient beds, diagnostic and ancillary services, as well as two new hospitals.

The full plan, all appendices, and related information can be viewed at *http://www.va.gov/CARES.* It also is available for inspection in the Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1063B, Washington, DC 20420. The draft National CARES Plan, including an appendix that summarizes individual network plans, which was prepared by VA's Under Secretary for Health after review of present and projected user data, as well as input from a wide range of sources and stakeholders and the individual network plans will be published in another **Federal Register** notice in the near future.

The independent CARES Commission, appointed by the VA Secretary, is evaluating this draft National CARES Plan, which incorporates individual network Market Plans. Members of the Commission include individuals with special knowledge or interest relating to VA health care, as well as representatives from stakeholders' groups.

This notice provides interested persons an opportunity to submit written comments concerning the draft National CARES Plan to the CARES Commission. The Commission will consider these comments in developing its recommendations to the VA Secretary. Under the CARES process, the Secretary will either accept or reject the Commission's recommendations, without modification.

Dated: August 6, 2003.

Tim S. McClain,

General Counsel.

[FR Doc. 03–20396 Filed 8–6–03; 3:18 pm]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 153

Friday, August 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

Correction

In notice document 03–18631 appearing on page 43366 in the issue of Tuesday, July 22, 2003, make the following corrections:

1. On page 43366, in the first column, under the heading **ACTION**, in the fourth line, ''Bank'' should read, ''Band''.

2. On the same page, in the same column, under the same heading,in the seventh line, ''Bank'' should read, ''Band''.

3. On the same page, in the same column, under the heading **SUMMARY**, in the 14th line, ''Bank'' should read, ''Band''.

[FR Doc. C3–18631 Filed 8–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

Correction

In notice document 03–19758 appearing on page 45895 in the issue of Monday, August 4, 2003 make the following correction:

On page 45895, in the second column, in the first paragragh, in the third line from the bottom, ''8011 I St.'' should read, ''801 I. St.''.

[FR Doc. C3–19758 Filed 8–7–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

August 8, 2003

Part II

Federal Election Commission

11 CFR Parts 104, 107, et al.

Public Financing of Presidential Candidates and Nominating Conventions; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 107, 110, 9001, 9003, 9004, 9008, 9031, 9032, 9033, 9034, 9035, 9036, and 9038

[Notice 2003–12]

Public Financing of Presidential Candidates and Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising several portions of its regulations governing the public financing of Presidential candidates, in both primary and general election campaigns, and Presidential nominating conventions. These regulations implement the provisions of the Presidential Election Campaign Fund Act (''Fund Act'') and the Presidential Matching Payment Account Act (''Matching Payment Act''), which establish eligibility requirements for Presidential candidates and convention committees seeking public financing and indicate how funds received under the public financing system may be spent. The revised rules also implement the Bipartisan Campaign Reform Act of 2002, as it applies particularly to the Fund Act and the Matching Payment Act. The revised rules reflect the Commission's experience in administering these programs, particularly during the 2000 election cycle, and anticipate some questions that may arise during the 2004 Presidential election cycle. Further information is contained in the Supplementary Information that follows.

EFFECTIVE DATE: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Associate General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, Mr. Robert M. Knop, or Ms. Delanie DeWitt Painter, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations governing the public financing of Presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the 2004 election cycle. These rules implement 26 U.S.C. 9001–13 and 26 U.S.C. 9031–42. The revised rules apply certain provisions of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (2002) (''BCRA''), to Presidential nominating convention financing. The revised rules also: (1) Limit the use of public funds for winding down costs for both primary and general election Presidential candidates; (2) clarify rules concerning the attribution of expenses to the expenditure limitations for Presidential primary candidates and repayments based on expenditures in excess of those limitations; (3) modify several aspects of General Election Legal and Accounting Compliance Funds; (4) require Presidential committees to notify the Commission prior to changing their non-election year reporting schedules; (5) create a new ''shortfall bridge loan exemption'' from a primary candidate's overall expenditure limitation; (6) define ''municipal funds'' to eliminate the former distinction between permissible host committee activity that was impermissible for municipal funds; (7) subject municipal funds to the same disclosure rules as host committees; (8) delete the requirements that only ''local'' individuals and ''local'' entities may donate to host committees and municipal funds; and (9) make technical changes.

The Commission published a Notice of Proposed Rulemaking on April 15, 2003, 68 FR 18484. Written comments were due by May 23, 2003. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under ''Public Financing of Presidential Candidates and Nominating Conventions.'' The Commission held a public hearing on June 6, 2003 at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at the Web site identified above. Please note that, for purposes of this document, the terms ''commenter'' and ''comment'' apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on July 31, 2003.

Explanation and Justification

11 CFR Part 104—Reports by Political Committees

11 CFR 104.5(b)(1)—Election Year Reports

The regulation at 11 CFR 104.5(b)(1) establishes the filing dates for reports by principal campaign committees (''PCC''s) of Presidential candidates, during election years in accordance with 2 U.S.C. 434(a)(3)(A). This rule is being revised to correct several citations to reflect changes to 11 CFR 104.5(a) promulgated when the Commission implemented BCRA's new reporting requirements. The new citations refer to the same pre- and post-election reports so the reporting requirements are not changed. Specifically, the reference in 11 CFR 104.5(b)(1)(i)(C) is being changed from 11 CFR 104.5(a)(1)(i) to ''paragraph (a)(2)(i) of this section'' and the reference to 11 CFR 104.5(a)(1)(ii) is being changed to ''paragraph (a)(2)(ii) of this section.'' In 11 CFR 104.5(b)(1)(ii), the reference to 11 CFR 104.5(a)(1) is being changed to ''paragraphs (a)(1) and (2) of this section.''

Section 104.5(b)(1)(ii) operates with two other provisions, § 104.5(b)(1)(i) and (iii), to specify the circumstances under which a Presidential PCC is not required to file monthly reports during the Presidential election year. A Presidential PCC must report monthly during an election year if contribution receipts or expenditures exceed or are anticipated to exceed $100,000. 11 CFR 104.5(b)(1)(i) and (iii). In order for the three provisions to work harmoniously, all four conditions listed in § 104.5(b)(1)(ii) must be satisfied before a PCC is relieved of the monthly filing requirement. Therefore, section 104.5(b)(1)(ii) is being revised to replace the disjunctions ''or'' with the conjunctions ''and'' in three instances.

11 CFR 104.5(b)(2)—Non-Election Year Reports: Quarterly and Monthly Reporting Requirements

Section 104.5(b)(2) provides that principal campaign committees of Presidential candidates may file campaign reports in non-election years on either a monthly or a quarterly basis. The previous rules did not explain how PCCs may change their reporting frequency during a non-election year from monthly to quarterly or *vice versa.*

The Commission is revising § 104.5(b)(2) to set forth requirements for PCCs of Presidential candidates

seeking to change reporting frequency. One commenter stated that this change fills a gap in the regulations and provides a procedure for switching reporting similar to that for unauthorized committees, which will be beneficial even though Presidential candidates' PCCs will seldom switch reporting schedules. The revised rule at § 104.5(b)(2) allows a PCC to change its filing schedule in a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The Presidential candidate's PCC is then required to file the next required report under its new filing frequency. In addition, a PCC may change its filing frequency no more than once in a calendar year. This rule establishes the same requirements as are found in 11 CFR 104.5(c) for unauthorized committees. The Commission notes that Presidential candidates' PCCs are not permitted to change their filing frequency during election years under 2 U.S.C. 434(a)(3)(A), except that a PCC that files quarterly reports must begin filing monthly reports at the next reporting period after it receives contributions or makes expenditures in excess of $100,000.

11 CFR Part 107—Presidential Nominating Convention, Registration and Reports

11 CFR 107.2—Registration and Reports by Host Committees and Municipal Funds

The NPRM proposed revising the host committee and municipal fund registration and reporting requirements in 11 CFR 107.2 in two respects to reflect proposed changes to other Commission regulations. 68 FR at 18512. First, the NPRM proposed changing the title of section 107.2 as well as a reference in the text of the section to reflect the new definition of ''municipal fund'' it had proposed for 11 CFR 9008.50(c). Second, the NPRM proposed adding a sentence to 11 CFR 107.2 to reflect a revision it proposed for 11 CFR 9008.51 to require that host committee and municipal fund reports contain the information specified in 11 CFR part 104.

For the reasons explained in greater detail below, the Commission has decided to modify both 11 CFR 9008.50 and 11 CFR 9008.51 as proposed. *See* Explanation and Justification for new 11 CFR 9008.50(c) and 11 CFR 9008.51(b)(1), below. Accordingly, the Commission has decided to change the title of section 107.2 from ''Registration and reports by host committees and committees, organizations or other groups representing a state, city or other local government agency'' to ''Registration and reports by host committees and municipal funds.'' *See* new 11 CFR 107.2. Similarly, the Commission has decided to change the phrase used to describe municipal funds in the text of the section from ''each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a Presidential nominating convention'' to ''municipal fund.'' In addition, the Commission has decided to add the proposed sentence to § 107.2 requiring that host committee and municipal fund reports ''shall contain the information specified in 11 CFR part 104.'' None of the commenters addressed these changes.

11 CFR Part 110—Contribution and Expenditure Limitations and Prohibitions

11 CFR 110.2—Contributions by Multicandidate Political Committees (2 U.S.C. 441a(a)(2))

For a full discussion of pre-candidacy expenditures by multicandidate political committees that are deemed in-kind contributions, see the Explanation and Justification for 11 CFR 9034.10 below. The language in the final rules at 11 CFR 110.2(l) varies from the language at 11 CFR 9034.10 because the candidate involved would not be publicly funded and, therefore, the consequence of a reimbursement would be simply to convert the payment from an in-kind contribution to an expenditure of the candidate. The qualified campaign expense concept and the attendant spending limit provisions are not implicated for candidates who are not publicly funded.

11 CFR Part 9001—Scope

11 CFR 9001.1—Scope

The Commission is making two technical amendments to this section to update the references to its other regulations.

11 CFR Part 9003—Eligibility for Payments

11 CFR 9003.1—Candidate and Committee Agreement

The Commission is making a technical amendment to the regulations on candidate agreements in § 9003.1 to update the reference to other regulations. Under revised paragraph (b)(8), candidates and their authorized committees must agree to comply with the Commission's rules through 11 CFR part 400.

11 CFR 9003.3—Allowable Contributions; General Election Legal and Accounting Compliance Fund

The Commission is revising its rule governing General Election Legal and Accounting Compliance Funds (''GELACs'') in several respects.

11 CFR 9003.3(a)(1)—Sources

1. Solicitation of GELAC Funds

Regulations issued in 1999 barred the solicitation and deposit of GELAC contributions prior to June 1 of the calendar year of a Presidential general election. *See* former 11 CFR 9003.3(a)(1)(i) and (a)(1)(i)(A). Deposits earlier than June 1 were permitted only for excessive primary contributions that had been redesignated for the GELAC under the previous rules. The NPRM sought comment on whether to change the date to either April 1 or May 1. One commenter supported the greater flexibility that would be provided with an earlier date, but nonetheless described the proposed change as a relatively insignificant step. The only other commenter to address this issue saw no reason to change the June 1 date.

The 1999 explanation and justification stated that the June 1 rule was intended to address two issues. The first was that candidates who do not receive their party's nomination must return all GELAC contributions, which can be difficult if some have been used to defray overhead expenses or to solicit additional GELAC contributions. The second concern was to ensure that GELAC funds are not improperly used to make primary election expenditures. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49356 (Sept. 13, 1999). The Commission selected the June 1 date because ''barring unforeseen circumstances, this is the point when a party's prospective nominee can be reasonably assured that he or she will need to raise funds for a GELAC'' and the date gives prospective nominees ''sufficient time to raise the funds that will be needed.'' *Id.* Because the effective date of these regulatory amendments was June 1, 2000, the pre-June 1 solicitation prohibition was not operative for the 2000 election cycle.

The Commission has decided to change the starting date for GELAC solicitations and most deposits to April 1. The earlier primary dates for some states in the 2004 Presidential election cycle are likely to lead to an earlier

resolution of nomination contests, even though the later than usual dates for the Presidential nominating conventions in 2004 will mean that the official start of the general election campaigns will be later in the cycle than usual. Therefore, the June 1 date in the former 11 CFR 9003.3(a)(1)(i) and (a)(1)(i)(A) is changed to April 1 of the election year as the starting date for GELAC solicitations and most deposits.

2. Redesignation of Excessive Contributions to the GELAC

The Commission is revising its rules governing the sources of GELAC funds at 11 CFR 9003.3(a)(1) to reflect its recent changes to its rules concerning the redesignation of excessive contributions at 11 CFR 110.1(b)(5)(ii)(B). *See Explanation and Justification for the Rules Governing Contribution Limitations and Prohibitions,* 67 FR 69928, 69930–32 (Nov. 19, 2002). These changes allow authorized committees to redesignate excessive primary contributions to the general election without obtaining a signed written document from the contributor under certain circumstances. Section 110.1(b)(5)(ii)(B) allows the candidate's committee to presume that the contributor of an excessive primary contribution would not object to a redesignation of any excessive amount to that candidate's general election, without obtaining written agreement from the contributor for the redesignation. *Id.* at 69931. The explanation and justification for this rule elaborated that ''if a presidential candidate's authorized committee accepts public funding in the general election, the presumption is available to any such committees only to the extent they are permitted to accept contributions to a general election legal and accounting compliance fund.'' *Id.* at 69930–31.

The NPRM proposed revisions to 11 CFR 9003.3(a)(1)(i), (a)(1)(i)(C) and (a)(1)(v) to permit publicly funded Presidential candidates to presume that those making excessive contributions for the primary election would consent to the redesignation of their contributions to the candidate's GELAC. The three commenters who addressed this issue supported these proposed changes.

The Commission has decided to revise its rules to reflect the adoption of the presumptive redesignations for the GELAC, with several changes from proposed 11 CFR 9003.3(a)(1) to clarify the operation of the rule and presumptive redesignations. Section 9003.3(a)(1)(i) is being revised to delete the phrase ''by the contributor'' to permit the deposit of contributions redesignated by presumption into GELACs. Section 9003.3(a)(1)(i)(C) is not being revised because the NPRM's revisions for this provision incorrectly suggested that a contribution redesignated by presumption is considered a contribution designated in writing.

Section 9003.3(a)(1)(ii)(A), which the NPRM would not have revised, applies by its terms to ''contributions made during the matching payment period that do not exceed the contributor's limit for the primary election.'' Because presumptive redesignations are limited to excessive contributions, contributions under this provision can only be redesignated in writing, so the reference to ''redesignations'' in section 9003.3(a)(1)(ii)(A)(*3*) is being revised to ''written redesignations.'' Similarly, the citation to 11 CFR 110.1(b)(5) in § 9003.3(a)(1)(ii)(A)(*4*) is being revised to refer only to the provisions for written redesignations, which are 11 CFR 110.1(b)(5)(i) and (ii)(A). The recordkeeping requirements in 11 CFR 110.1(l) continue to be incorporated by citation into § 9003.3(a)(1)(ii)(A)(*4*).

Section 9003.3(a)(1)(iv) continues to require that contributions that are made after the beginning of the expenditure report period but that are not designated in writing for the GELAC must first be used to satisfy any primary committee debts or repayment obligations before they can be redesignated in writing for the GELAC. This approach constitutes an exception to the usual approach, which would consider these contributions as made with respect to the general election (*i.e.*, chronologically the next election under 11 CFR 110.1(b)(2)(i)). The Commission believes that the priority for primary committee obligations should be continued for these contributions. Consequently, the provision is being revised to state explicitly that these contributions are considered made with respect to the primary election. Additionally, § 9003.3(a)(1)(iv)(C) is being revised to state that the redesignation must be written; it is not presumptive. The contributions subject to redesignation under section 9003.3(a)(1)(iv) are those that do not exceed the contributor's limit for the primary election. These revisions were not in the NPRM, but they are consistent with the proposal, which would not have revised the primary preference and would have limited presumptive redesignation to excessive contributions.

Revisions to § 9003.3(a)(1)(v) make clear that excessive primary contributions can be presumptively redesignated for the GELAC pursuant to 11 CFR 110.1(b)(5)(ii)(B). This applies to contributions made during the matching payment period or, pursuant to 11 CFR 9003.3(a)(1)(iv), during the expenditure report period. In order to do so, the phrase ''obtains the contributor's redesignation for the GELAC'' is being replaced with ''redesignates the contribution for the GELAC,'' and the citation to 11 CFR 110.1 is being clarified to 11 CFR 110.1(b)(5)(i) and (ii)(A) or (ii)(B). This provision is also amended to note specifically that the timing requirement in the presumptive redesignation regulation, 11 CFR 110.1(b)(5)(ii)(B)(*1*), does not apply in this instance due to the operation of section 9003.3(a)(1)(iv).

Contributions made during the expenditure report period that are considered made with respect to the primary election may not be submitted for matching. *See* 11 CFR 9034.3(i). Although one commenter supported the matchability of such contributions, the Commission continues to consider these contributions to be unmatchable. As presumptively redesignated contributions, they were made for a purpose other than influencing the results of a primary election, and section 9034.3(i) prohibits matching such contributions.

Thus, considered as a whole, the revised 11 CFR 9003.3(a)(1) allows a candidate to treat all or part of an excessive primary contribution as a GELAC contribution, as long as the contribution meets the following requirements: (1) The contribution was not designated for a particular election; (2) the contribution would exceed the primary election contribution limitations if it were treated as a primary contribution; (3) the redesignation would not cause the contributor to exceed the contribution limitations; and (4) the treasurer provides a written notification to the contributor within 60 days of receipt of the contribution of the amount that was redesignated to the GELAC and that the contributor may request a refund. The Commission notes that presumptively redesignated contributions to the GELAC must be refunded if the contributor requests a refund or, as with all other contributions accepted for the GELAC, within 60 days of a candidate's date of ineligibility (''DOI'') if the candidate does not become the nominee. *See* 11 CFR 9003.3(a)(1)(i)(A).

The NPRM also sought comment on expressly allowing excessive contributions to a GELAC to be presumptively redesignated to a Presidential candidate's authorized committee for the primary election,

based on the conditions delineated at 11 CFR 110.1(b)(5)(ii)(C). The Commission's rules at 11 CFR 110.1(b)(5)(ii)(C) allow authorized committees to redesignate excessive contributions presumptively to the primary election, under certain conditions. One commenter supported the proposal to apply these rules to the GELAC.

The Commission has determined that no further changes to §9003.3(a)(1) in this regard are necessary because there are no other GELAC contributions that could be presumptively redesignated for the primary election. Contributions that are designated in writing by the contributors for the GELAC would be ineligible for redesignation by presumption pursuant to 11 CFR 110.1(b)(5)(ii)(C)(2). Contributions that are not designated in writing for the GELAC will be considered made with respect to the primary election, except when the conditions for depositing them in the GELAC pursuant to 11 CFR 9003.3(a)(1)(iv) are satisfied. If these contributions exceed the contributor's primary election contribution limit, they may be presumptively redesignated pursuant to revised §9003.3(a)(1)(v).

11 CFR 9003.3(a)(2)—Uses

The rule on the uses of GELAC funds is being revised to update the permissible uses of GELAC funds consistent with BCRA and to otherwise improve the rule.

11 CFR 9003.3(a)(2)(i)(D)—Primary Repayments

The NPRM proposed amending the rule on the permissible uses of GELAC funds to permit Presidential candidates to use GELAC funds to make any repayments owed by their authorized committee for the primary election. GELACs are permitted to make general election repayments under 11 CFR 9007.2, and the proposed revisions at 11 CFR 9003.3(a)(2)(i)(D) specified that GELACs may also make primary campaign repayments required under 11 CFR 9038.2 or 9038.3. One commenter stated the revision is justified, provided the rule does not require that repayments must be made before other permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). The only other commenter opposed the proposed revision, based on an expressed opposition to GELACs in general.

The Commission has decided to revise 11 CFR 9003.3(a)(2)(i)(D) to specify that the GELAC may be used to make repayments owed by the candidate's primary campaign committee pursuant to 11 CFR 9038.2 and 9038.3 in addition to general election repayments under 11 CFR 9007.2. This amendment to the GELAC rules is based on the Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits contributions to be used ''for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual.'' This statutory language is sufficiently broad to encompass primary election repayments. The effect of this revision, combined with the revisions to 11 CFR 9003.3(a)(2)(iv) described below, is to require Presidential candidates to use their GELAC funds for their primary committee repayments before any funds remaining in the GELAC can be dispensed pursuant to 2 U.S.C. 439a. Thus, this revision imposes an obligation on GELACs as much as it permits such funds to be used to satisfy debts to the United States Treasury.

11 CFR 9003.3(a)(2)(i)(I)—Winding Down Expenses

The NPRM proposed revisions to 11 CFR 9003.3(a)(2)(i) to restore a provision related to the use of GELACs for general election winding down expenses. In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii), which stated that 100% of salary, overhead, and computer expenses incurred by a campaign after the end of the expenditure report period may be paid from a GELAC, and that such expenditures will be presumed to be solely to ensure compliance with the FECA and the Fund Act. 60 FR 31875 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the Code of Federal Regulations, but was inadvertently omitted from the 2000 through 2003 editions. The Commission is reinstating this important provision, with certain revisions discussed below, and moving it to 11 CFR 9003.3(a)(2)(i)(I). No commenters addressed this rule.

In addition, the Commission has decided to add primary election winding down costs incurred after the end of the expenditure report period to the rule on permissible uses of GELAC funds at new 11 CFR 9003.3(a)(2)(i)(I). Two commenters addressed this proposal. One commenter expressed opposition to GELACs in general and, by extension, any expansion of permissible uses of GELACs. Another commenter thought it unfair to permit candidates who run in both the primary and the general elections to use GELACs to pay primary winding down costs, while primary candidates who do not compete in the general election are required to refund GELAC contributions. This commenter also faulted the use of any GELAC funds for expenditures subject to the primary expenditure limit.

In reaching its decision, the Commission considered that the primary and general election campaign committees are simultaneously winding down following the expenditure report period and often share salary, overhead, and computer expenses. In addition, the primary and general election committees often share winding down expenses related to legal and accounting compliance such as attorneys and accountants. The regulation at 11 CFR 9034.4(a)(3)(iii) recognizes that a significant amount of winding down activity during this period is related to compliance and allows primary campaigns to treat 100% of salary, overhead, and computer costs during this period as legal and accounting compliance expenses exempt from the expenditure limitations. Similarly, former 11 CFR 9004.4(a)(4)(iii) presumed these expenses were for compliance and therefore exempted them from the general election expenditure limitation pursuant to 11 CFR 9002.11(b)(5). Permitting the GELAC to pay salary, overhead, and computer costs after the end of the expenditure report period for both the primary and general election committees will allow candidates who run in both the primary and general elections to choose to pay these costs from the GELAC. Because these expenses are exempt from both the primary and general election expenditure limits, the concerns about one publicly financed campaign funding another are reduced. Any primary winding down costs not entitled to the compliance exemption will be subject to the primary expenditure limit, even if paid by the GELAC. Primary winding down costs paid by the GELAC must be included on the Statement of Net Outstanding Campaign Obligations pursuant to 11 CFR 9034.5(a)(1). A receivable from the GELAC must also be listed for any primary winding down costs paid with GELAC funds. 11 CFR 9034.5(a)(2)(iii). Any winding down costs paid by the GELAC will not count toward either winding down limitations in new 11 CFR 9004.11(b) or 9034.11(b).

The Commission acknowledges that primary candidates who do not compete in the general election will not have GELAC funds available for their winding down costs. This result is unavoidable, however, because FECA's contribution limits are per election. *See* 2 U.S.C. 441a. Thus, contributors to candidates who compete only in the primary are limited to contributing for that election only; while contributors to candidates who compete in both the

primary and general elections may contribute the full amount for both the primary election and the GELAC. The authorization to use GELAC funds to pay primary winding down expenses does not cause the different treatment, and it cannot justify permitting primary candidates to receiving contributions of twice the per-election limit.

11 CFR 9003.3(a)(2)(iv)—Funds Remaining in the GELAC

The rule at 11 CFR 9003.3(a)(2)(iv) concerning the use of GELAC funds is being revised to update the permissible uses of GELAC funds consistent with BCRA. The previous rule at 11 CFR 9003.3(a)(2)(iv) stated that if there are ''excess campaign funds'' after payment of all expenses set forth in §9003.3(a)(2)(i), such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

BCRA amended 2 U.S.C. 439a to eliminate its reference to ''excess campaign funds,'' and the Commission revised 11 CFR part 113 accordingly. *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds,* 67 FR 76962, 76978–79 (Dec. 13, 2002). The rule governing the use of GELAC funds is being revised to replace the reference to ''excess campaign funds'' in 11 CFR 9003.3(a)(2)(iv) with ''funds remaining in the GELAC'' to clarify that only funds that are not needed for GELAC expenses may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. All of the commenters who addressed this proposed change supported it, provided the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 continue to be permissible uses of funds remaining in the GELAC, which they are.

The Commission also is revising 11 CFR 9003.3(a)(2)(iv) to state expressly that GELAC funds must not be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 that are beyond the uses listed in 11 CFR 9003.3(a)(2) until the completion of the audit and repayment process, which includes making any repayments owed. No commenters addressed this provision.

11 CFR 9003.5—Documentation of Disbursements

Commission regulations in 11 CFR 102.9(b) describe the requirements for the documentation of disbursements applicable to all political committees. Additional documentation requirements for publicly funded general election committees are set forth in 11 CFR 9003.5. Section 9003.5 is being revised to clarify that publicly funded general election candidates must comply with both the general rules at §102.9(b), as well as the specific rules applicable to publicly funded general election candidates governing the documentation of disbursements in 11 CFR 9003.5(b). No commenters addressed this revision.

11 CFR Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

11 CFR 9004.4—Use of Payments; Examples of Qualified Campaign Expenses and Non-Qualified Campaign Expenses

Section 9004.4, which concerns qualified and non-qualified campaign expenses, is being revised in several respects. First, the section heading for 11 CFR 9004.4 is being modified to indicate that it contains examples of qualified campaign expenses and non-qualified campaign expenses. Previous §9004.4(a)(4)(ii) is being renumbered as §9004.4(a)(5) to clarify that accounts payable costs are a separate type of qualified campaign expense from winding down costs. There were no comments on these changes.

Second, the rules on winding down costs are being moved from paragraph (a)(4) to new §9004.11. Revised 11 CFR 9004.4(a)(4) provides that payments from the Presidential Election Campaign Fund may be used to defray winding down costs pursuant to 11 CFR 9004.11, which contains new rules on winding down costs and is discussed below.

11 CFR 9004.4(a)(6)—Gifts and Bonuses

The NPRM proposed revising the rules governing payment of gifts and bonuses by general election candidates at newly redesignated 11 CFR 9004.4(a)(6). The rules allow gifts and bonuses to be treated as qualified campaign expenses for general election candidates if they meet certain conditions. Under 11 CFR 9004.4(a)(6), gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services are limited to $150 per individual recipient and a total of $20,000 for all gifts. Monetary bonuses for employees and consultants in recognition of campaign-related activities or services must be provided for pursuant to a written contract made prior to the general election and must be paid no later than 30 days after the end of the expenditure report period. *Id.* The NPRM sought comment as to whether to limit the amounts of gifts and bonuses, whether to retain the requirement of a written contract for monetary bonuses, and whether to create possible additional or different controls.

The Commission has decided to narrow the requirements with respect to when a written contract will be required for monetary bonuses. Because the Commission does not require written contracts for other employer-employee relationships, the new rule is more narrowly tailored to address the purpose of the restriction. The previous regulation was promulgated in reaction to a publicly funded campaign paying large monetary bonuses after the election upon discovery of excess public funds. The new rule addresses that abuse more directly while not otherwise limiting employment arrangements, in recognition of the absence of an incentive to waste public funds before the date of the election. Therefore, the new rule requires a written contract only when monetary bonuses are paid after the election.

11 CFR 9004.4(b)(3)—Non-Qualified Campaign Expenses

Section 9004.4(b) lists non-qualified campaign expenses. Paragraph (b)(3) previously stated that any expenditures incurred after the close of the expenditure report period were not qualified campaign expenses except to the extent permitted as winding down costs or accounts payable under 11 CFR 9004.4(a)(4). Section 9004.4(b)(3) is being clarified to state specifically that accounts payable pursuant to newly redesignated 11 CFR 9004.4(a)(5) and winding down costs pursuant to new §9004.11, discussed below, are considered qualified campaign expenses. There were no comments on these changes.

11 CFR 9004.11—Winding Down Costs

During the audit and repayment process, Presidential committees and the Commission's auditors estimate costs associated with terminating the campaign and complying with the post-election requirements of the Fund Act and FECA, and may sometimes reach substantially disparate winding down estimates. Issues have arisen as to the appropriate amounts and types of winding down expenses and as to the length of time committees need to wind down. These disputes have lengthened the audit and repayment processes for some campaigns. Both actual and estimated future winding down costs are included in a general election candidate's Statement of Net Outstanding Qualified Campaign Expenses (''NOQCE''). Consequently, if the Commission auditors' figures are lower than the committee's estimates, a

dispute may arise in determining the candidate's NOQCE and any surplus funds or resulting repayment. Disallowed winding down expenses can increase the amount of any surplus funds and the resulting repayment determination, or for primary election candidates, the disallowed expenses can decrease a candidate's entitlement to additional matching funds.

To avoid these disputes in the future, the Commission has decided to place certain reasonable restrictions on the amount of public funds used for winding down expenses. Thus, a new rule in 11 CFR 9004.11 is being added regarding general election candidates' winding down expenses. A comparable new rule applicable to primary election candidates is located in new 11 CFR 9034.11, which is discussed below.

11 CFR 9004.11(a)—Definition of ''Winding Down Costs''

New 11 CFR 9004.11(a) contains the definition of winding down costs previously found in 11 CFR 9004.4(a)(4). The new definition is not significantly changed from the previous one, except that it clarifies that winding down costs include post-election requirements of both FECA and the Fund Act.

11 CFR 9004.11(b)—Winding Down Limitation

The NPRM proposed two restrictions for general election winding down costs: a temporal restriction and a monetary limitation of 2.5% of the general election spending limit.

Several commenters opposed the restrictions proposed in the NPRM. Some believed publicly funded Presidential campaigns do not have an incentive to inflate their winding down expenses because primary candidates would prefer to repay the ratio portion of any surplus funds, in order to have flexibility in spending the remaining surplus, and because general election candidates would prefer to use limited public funds over the course of the election.

The Commission disagrees. In the Commission's experience, some candidates might have incentives to prolong and increase their winding down activity, either to maximize their entitlement or to consume any remaining public funds while minimizing potential surplus repayments. Although primary candidates have more flexibility in spending surplus funds after making a *pro rata* repayment, this benefit is outweighed by the possibility of significantly reducing a potential repayment by contesting it. Similarly, although general election candidates may not plan to reserve much money from active campaigning for winding down expenses, to the extent some of them have remaining public funds after the election, using them for winding down costs may be preferable to repaying them.

One commenter noted that the candidate's burden to demonstrate and document that winding down costs are qualified campaign expenses to avoid a repayment deters unreasonable winding down expenses. Others pointed out that winding down costs are not necessarily related to the amount of expenditures made by a campaign and that under-funded campaigns may have high winding down expenses because they did not have sufficient funds for compliance during the campaign and might need to spend more on post-election record reconstruction. Some noted that the costs of defending a campaign in enforcement matters, audits, repayment determinations, and other legal proceedings are unrelated to the amount of the candidate's expenditures, and that complaints and law suits may be politically motivated. Some expressed concern that winding down restrictions would result in numerous surplus repayments by primary candidates after their winding down in excess of the restrictions is disallowed, and candidates would have to raise private funds to defend themselves and defray winding down costs long after the election is over. Another argument against the winding down limit was that public funding is intended to reduce reliance on private contributions and that limiting winding down while allowing winding down costs to be paid from the GELAC would encourage candidates to rely more heavily upon private funds in the GELAC to meet legitimate and unavoidable campaign expenses.

On the other hand, one commenter argued that the three general election campaigns in 2000 that wound down for less than the proposed limit show that the limit is unnecessary because candidates would only exceed the limit under extraordinary circumstances.

1. Monetary Limit

The Commission has decided to adopt new 11 CFR 9004.11(b), which establishes a monetary limitation on the total amount of general election winding down expenses that may be paid for with public funds. In considering this issue, the Commission reviewed the amounts spent for winding down costs by publicly funded candidates during the 2000 election cycle and compared their approximate winding down costs to the proposed winding down limitation. Of three publicly funded general election candidates, one would have spent less than 1% of the expenditure limitation, the second would have spent less than 2% of his expenditures, while the third would have spent only slightly more than the winding down limitation of 2.5% of the expenditure limitation. The last committee paid some of its winding down expenses with GELAC funds, which reduced its winding down costs to less than 2% of the expenditure limitation.

The ''winding down limitation'' in new § 9004.11(b) limits the total amount of publicly funded winding down expenses for general election candidates to the lesser of: (1) 2.5% of the expenditure limitation; or (2) 2.5% of the total of: (A) the candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus (B) the candidate's expenses exempt from the expenditure limitation, such as fundraising expenses, as of the end of the expenditure report period. Basing the winding down limitation on a candidate's expenditures or on the maximum expenditure limitation recognizes that larger campaigns will generally have more winding down expenses than smaller campaigns. Notwithstanding the amount determined based on these calculations, the new rule permits all general election candidates to spend at least $100,000 on winding down costs. The $100,000 allowance recognizes that all publicly funded committees incur certain winding down expenses related to the requirements of the audit and repayment process that do not vary with the total amount of the committees' expenditures.

Based in part on the 2000 winding down data and experience in prior election cycles, the Commission is satisfied that campaigns can wind down in compliance with the 2.5% limit without any hardship and that the limitation will affect only campaigns with unusually high winding down costs. The monetary limitation is necessary to ensure that publicly funded campaign committees wind down as quickly and efficiently as possible and do not inflate winding down costs in order to avoid a surplus repayment to the United States Treasury. The monetary limitation establishes a fair and readily determined amount to ensure that all campaigns are treated consistently with respect to winding down costs and that public funds are used in accordance with statutory purposes.

The Commission expects that most PCCs of Presidential candidates will incur winding down expenses substantially below the new dollar limitations. Campaigns with unusually high compliance costs may use their GELAC or a primary candidate's private funds after no public funds remain in the candidate's accounts to pay for such expenses. Paying winding down expenses with a GELAC is justified because a large amount of winding down expenses are related to compliance and most winding down expenses are not directly related to active campaigning.

In practice, the winding down limitation for fully funded major party general election candidates will be the maximum winding down limitation, 2.5% of the expenditure limitation for general election candidates under § 9004.11(b)(1). This maximum winding down limitation is calculated based upon a percentage of the general election candidate's expenditure limitation pursuant to 2 U.S.C. 441a(b), similar to the calculation of the 20% fundraising exemption or the 15% compliance exemption. *See* 11 CFR 100.146, 100.152, and 9002.11(b)(5). Currently, the general election expenditure limitation is equal to $72,960,000, so the 2.5% limit would equal $1,824,000.[1]

In contrast, the winding down limitation for most minor party general election candidates will equal 2.5% of their expenses during the expenditure report period under section 9004.11(c)(2).[2] The final rule addresses the calculation of the winding down limitation for those general election candidates who may solicit contributions by calculating the total of their expenditures subject to the limit, § 9004.11(b)(2)(i), plus their exempt expenses, § 9004.11(b)(2)(ii). The calculation includes exempt expenses such as fundraising and legal and accounting compliance costs to reflect the actual size of the campaign that is winding down. The fundraising exemption for general election candidates is applicable only to those candidates who may accept contributions to defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2), *i.e.,* minor party candidates and major party candidates who may solicit contributions to make up a deficiency in public funds received. *See* 11 CFR 100.152, 9003.3(b) and (c). Those general election candidates who may solicit contributions may also exempt legal and accounting compliance expenses from their expenditure limitations. *See* 11 CFR 100.146, 9003.3(b) and (c). Expenses for transportation of Secret Service and national security staff and media transportation expenses that are reimbursed by the media do not count against the expenditure limitations. *See* 11 CFR 9004.6(a), 9034.6(a). Thus, the exempt expenses considered under § 9004.11(c)(2)(ii) will include all three of the types of exempt expenses.

For purposes of calculating the amount of the winding down limitation under §9004.11(b)(2), a candidate's expenses will include both disbursements and accounts payable as of the end of the expenditure report period for the following categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements (line 29). The following payments should not be included in the expenses used to calculate the winding down limitation: transfers to other authorized committees (line 24), loan repayments (line 27), or contribution refunds (line 28).

The winding down limitation calculation does not include any expenditures in excess of the general election candidate's expenditure limitation; thus, making expenditures or accepting in-kind contributions that exceed the expenditure limits would not provide a basis for an increased winding down limitation. In addition, the new rule restricts the expenses used to calculate the winding down limitation to the period prior to the end of a general election candidate's expenditure report period to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

2. Expenses Subject to Winding Down Limitation

All expenses incurred and paid by a candidate during the winding down period, including fundraising costs, are subject to the new winding down limitation in new 11 CFR 9004.11. Under the new rule, the use of public funds to pay for winding down expenses in excess of these restrictions will constitute a non-qualified campaign expense that may be subject to repayment. However, these restrictions apply to the use of public funds or a mixture of public and private funds for winding down costs and will not limit the payment of winding down expenses from private contributions in a candidate's GELAC. Thus, expenses for legal and accounting compliance costs paid for with public funds count against the winding down limitation, but any winding down costs paid by a GELAC do not.

11 CFR 9004.11(c)—Allocation of Primary and General Winding Down Costs

Candidates who run in both the primary and general elections must allocate winding down expenses between the primary and general election campaigns. This can be complicated during the period after the general election because both campaigns are winding down simultaneously, often using the same staff, offices, equipment, vendors and legal representatives. To simplify the allocation, the NPRM proposed that committees could divide winding down costs between the primary and general campaigns using any allocation method, including allowing either the primary or the general campaign to pay 100% of winding down expenses.

One commenter advocated allowing campaigns to use any reasonable method that would require expenses indisputably related to one election be paid as winding down expenses of that election while shared winding down expenses such as legal fees could be allocated on any reasonable basis reflecting a good-faith estimate.

The final rules in new 11 CFR 9004.11(c) allow a candidate who runs in both the primary and general election to divide winding down costs between the primary and general campaigns using any reasonable allocation method. The final rule also specifies that an allocation method will be considered reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than one third of total winding down costs allocated to each committee. With this provision, the Commission has created a range of winding down cost allocations between a candidate's primary and general election authorized committees that will be considered *per se* to be the result of a reasonable method and therefore in compliance with this requirement. If particular circumstances require a candidate to allocate winding down costs so that one of the two committees is allocated less than one third of the total costs, with the other necessarily being allocated more than two thirds, those committees will be required to

[1] Before the 2004 general election, the general election expenditure limit under 2 U.S.C. 441a(b)(1)(B) is subject to an additional annual adjustment under 2 U.S.C. 441a(c).

[2] If major party candidates were required to solicit contributions to make up a deficiency in public funds, the winding down limitation would also equal 2.5% of their expenses during the expenditure report period.

demonstrate that their allocation method was reasonable. This new rule will give candidates the flexibility to allocate their winding down expenses based on the particular circumstances of their campaigns. Winding down activity for some candidates may be largely or entirely focused on one election. For example, candidates who do not receive public funds for the general election might concentrate winding down activity on their publicly funded primary committee. In addition, candidates might concentrate winding down efforts and expenses on the committee that must address more difficult and complex issues in the audit and repayment process or that have larger potential repayments. Any winding down costs paid by the GELAC can be allocated to either the primary or the general election committees for this purpose, although they will not count toward either winding down limitation in new 11 CFR 9004.11(b) or 9034.11(b).

Temporal Limits

The NPRM proposed a temporal restriction on winding down expenses, the ''winding down period,'' based on the length of a committee's audit and repayment process, including the administrative review of the repayment determination. Several commenters opposed these temporal limits because after the expiration of this period, campaigns may be involved in enforcement actions, repayment determination court challenges, investigations by other government entities, or other lawsuits.

The Commission believes that the winding down monetary limitation will be sufficient to address its concerns that winding down be completed expeditiously. Therefore, the Commission has decided not to include any temporal limitation in the final rule at 11 CFR 9004.11. Because the Commission is not including the temporal limit in the final rule, it is also not making the conforming changes proposed in the NPRM to 11 CFR 9004.9(a)(4) and 9034.5(b)(2) that would have referred to the winding down period in the sections discussing NOQCE and NOCO statements.

Other Winding Down Proposals

The NPRM also proposed increasing allowable winding down expenses to reflect the number of compliance actions involving a Presidential candidate's campaign committee.

One commenter stated that the Commission should not limit the use of public funds for costs related to compliance actions because candidates do not elect these expenses, and the compliance process is often used for political ends. This commenter further noted that campaigns and the Commission regularly dispute factual and legal issues, and responding to a compliance matter is an unwanted diversion that does not advance the candidate's campaign. The commenter also suggested that candidates should have the option of a separate legal defense account similar to a GELAC. In addition, this commenter suggested that recent changes to the public financing rules, such as the limitation on the timing for creating a GELAC, limiting legal and compliance costs to 15% of the primary spending limit and the new limits on winding down costs, discourage spending money on compliance.

As discussed above, winding down costs resulting from compliance actions were considered in determining the winding down limitations. This new rule allows candidates to classify compliance matters arising from the campaign as winding down costs. To the extent that such costs fall within the specified limitations, candidates may use public funds to pay for them. This rule is consistent with the Commission's prior practice. In addition, new 11 CFR 9004.11(a) clarifies that winding down costs include the costs of complying with both the FECA and the Fund Act (*e.g.,* costs related to the audit and repayment processes and reporting and recordkeeping, as well as costs incurred in responding to compliance matters). If a general election candidate exceeds the winding down limitations, private funds will be available through their GELAC for compliance expenses related to enforcement matters. For primary candidates, private funds will be available once the public funds in the candidates' accounts have been exhausted.

Combining Primary and General Winding Down Limitations

The Commission also considered whether to allow candidates who accept public funds for both the primary and general elections to combine their primary and general election winding down limitations into a joint monetary limit for the total winding down expenses of both committees. The Commission decided not to make this change because primary and general election winding down expenses are legally distinct and a candidate's primary and general election committees are generally treated as separate entities; thus, they should be required to adhere to separate winding down limitations. *See* new 11 CFR 9004.11(a) and 9034.11(a).

Alternative Proposals to Winding Down Restrictions

The NPRM sought comment on disallowing the use of public funds to pay any winding down costs. Under such an alternative, a primary election candidate would not have been permitted to use public funds to pay for any expenses incurred after the candidate's DOI or any expenses for goods or services to be used after the DOI. A general election candidate would not have been permitted to use public funds to pay for any expenses incurred after the end of the expenditure report period or any expenses for goods or services to be used after the end of the expenditure report period.

Two commenters opposed this proposal. One commenter argued that 26 U.S.C. 9038(b)(3), which requires candidates to retain matching funds ''for the liquidation of all obligations to pay qualified campaign expenses for a period not exceeding 6 months after the end of the matching payment period'' and ''promptly'' to repay a ratio of any surplus funds, is not determinative as to whether winding down costs are qualified campaign expenses because the statute contemplates a completely different system than the current audit process administered by the Commission. This commenter asserted that the statute envisioned that all issues related to the campaign, including the audit, repayment and enforcement matters would conclude within six months and advocated a complete overhaul of the audit and related enforcement process if winding down costs were to be limited. Another commenter stated that winding down expenses are unavoidable costs of a campaign, and that changing the rules would make candidates spend more time raising private funds to pay for these unavoidable costs, which could prolong the life of losing campaigns that must seek contributions to pay winding down costs.

The Commission is retaining its long-standing treatment of winding down costs as qualified campaign expenses. Although winding down costs are a category of qualified campaign expenses not specifically identified in the Fund Act or the Matching Payment Act, it is necessary to allow them to ensure that candidates may respond adequately during the audit, repayment and enforcement processes.

The NPRM also presented a second alternative approach to winding down costs which would have more precisely delineated the types of winding down costs that are permissible, consisting of

staff salaries, legal and accounting services, office space rental, utilities, computer services, other overhead expenses, consultants, storage, insurance, office supplies and fundraising expenses. One commenter said this alternative could be useful if the list is not intended to be exhaustive, because of the possibility of unforeseen but legitimate types of winding down costs.

The Commission has decided not to adopt this alternative approach because it is unlikely to resolve the issues that have arisen and could generate more issues. Disputes over winding down expenses often concern the appropriate amounts spent for particular expenses, the appropriate length of time a campaign should continue to need certain goods or services, and whether the campaign committee has provided sufficient documentation of expenses rather than focusing on the type of expenditure. A list of permissible winding down expenses would not address these frequently disputed issues, nor would it reduce the amount of winding down expenses.

Please note that the Commission made no changes to 11 CFR 9008.10(g)(7), governing winding down costs of convention committees.

11 CFR Part 9008—Federal Financing of Presidential Nominating Conventions

11 CFR 9008.3—Eligibility for Payments; Registration and Reporting

The Commission has decided to revise the convention committee reporting requirements in 11 CFR 9008.3 to require convention committees to submit a copy of all written contracts and agreements they make with the cities, counties, or States hosting the convention or any host committee or municipal fund. *See* new 11 CFR 9008.3(b)(1)(ii). Convention committees, host committees, and municipal funds are also required to submit any subsequent modifications to a previous contract or agreement.

The Commission believes that it is necessary to have copies of all such agreements in order to understand fully the obligations that each of those entities has agreed to assume with respect to the convention. Such contracts must be submitted with the report for the applicable reporting period. Related changes are also being made to the host committee and municipal fund reporting requirements. *See* Explanation and Justification for 11 CFR 9008.51, below. The wording of the final rule is being slightly clarified from the proposed rule, which was not addressed by any of the commenters.

11 CFR 9008.7(a)(4)(xii)—Use of Funds—Gifts and Bonuses

The NPRM sought comment on revising the rules governing the payment of gifts and bonuses by primary and general election candidates and by convention committees. The Commission has decided to make changes to 11 CFR 9008.7(a)(4)(xii), governing gifts and bonuses for convention committees, to make that section more consistent with the rules governing primary and general election committees. *See* newly redesignated 11 CFR 9004.4(a)(6) and 9034.4(a)(5). Specifically, the structure of the section is being changed to separate the requirements for gifts from those for bonuses. The new paragraph on bonuses requires that bonuses paid after the last date of the convention to committee staff and consultants in recognition of convention-related activities or services must be provided for pursuant to a written contract made prior to the date of the convention, and must be paid no later than 30 days after the convention.

11 CFR 9008.8—Limitation of Expenditures

The NPRM proposed two revisions to 11 CFR 9008.8. The first proposal was to revise references in the title and text of paragraph (b)(2) to reflect the proposed new definition of ''municipal fund'' in 11 CFR 9008.50(c). 68 FR at 18508. As explained below, the Commission is adopting the proposed definition of ''municipal fund.'' *See* Explanation and Justification for new 11 CFR 9008.50(c). Thus, the Commission is revising 11 CFR 9008.8(b)(2) to change the references in this provision from ''municipal corporations'' to ''municipal funds.'' The NPRM also proposed deleting ''government agencies.'' However, because some State or local governments may directly make convention expenditures, the references to government agencies are retained.

The second proposal in the NPRM was to revise 11 CFR 9008.8(b)(4)(ii)(B) to permit convention committees to establish separate legal and accounting compliance funds (''CLAF''). 68 FR at 18512. Under this proposal, contributions to CLAFs would only have been permitted to be used to pay for legal and accounting services related to compliance with FECA and the Fund Act. Disbursements from the CLAF for legal and accounting compliance services would not have been considered ''expenditures'' and, therefore, would not have counted against the convention committee's expenditure limit in 11 CFR 9008.8. The CLAF would have had a separate contribution limit from the national committee's limit.

The NPRM also sought comment on the contribution limit that should apply to contributors who wish to contribute to both the CLAF and to the political committees established and maintained by the same national political party. The only commenter to address this issue argued that allowing convention committees to establish CLAFs would amount to effectively doubling the national party contribution limit in 2 U.S.C. 441a(a)(1)(B) by allowing a donor to make two contributions up to the national party limit, one to the national party itself and the other to the CLAF. The commenter challenged the Commission's authority to allow convention committees to establish CLAFs because the receipt of public money by convention committees is conditioned on their abiding by set spending limits. The commenter also asserted that CLAFs would allow ''the infusion of private money into a system where Congress intended the party spending to be fully financed with public funds.''

The Commission has decided that permitting the national party committees to pay compliance expenses of the convention committee under 11 CFR 9008.8(b)(4)(ii) adequately addresses this issue. Therefore, the Commission has decided not to allow convention committees to establish separate legal and accounting compliance funds as proposed in the NPRM.

In addition to the proposals in the NPRM, the Commission is revising 11 CFR 9008.8(b)(4)(ii)(B), which previously stated the contribution limits for contributions to national political party committees from persons and from multicandidate committees. BCRA amended the first of those two limits and indexed the limitation to inflation. Therefore, the Commission is revising the regulation to refer to the amounts permitted under 11 CFR 110.1(c) and 110.2(c).

11 CFR 9008.10—Documentation of Disbursements; Net Outstanding Convention Expenses

The requirements for the documentation of disbursements applicable to all committees are described in 11 CFR 102.9(b). Additional documentation requirements for publicly funded convention committees are set forth in 11 CFR 9008.10. The introductory language in section 9008.10 is being revised to state that the requirements in this section are in addition to the requirements of 11 CFR 102.9(b) governing the

documentation of disbursements. Adding this reference to 11 CFR 102.9(b) will assist the reader in locating these other pertinent provisions.

11 CFR 9008.12—Repayments

The Commission is revising 11 CFR 9008.12(b)(7) to reflect changes in other portions of the convention regulations. First, two references within paragraph (b)(7) are being changed to reflect the new definition of ''municipal fund'' in 11 CFR 9008.50(c). *See* Explanation and Justification for 11 CFR 9008.50, below.

Second, the Commission is deleting the final clause in paragraph (b)(7), which had identified donations from a nonlocal businesses as impermissible host committee/municipal fund contributions, to reflect its deletion of the requirement in 11 CFR 9008.52(c) and 11 CFR 9008.53(b) that only local entities and individuals may make donations to host committees and municipal funds to defray convention expenses. *See* Explanation and Justification for 11 CFR 9008.52 and 11 CFR 9008.53, below. The final rules substantially follow the proposed rules, which were not addressed by any of the commenters.

Subpart B—Host Committees and Municipal Funds Representing a Convention City

11 CFR 9008.50—Scope and Definitions

The NPRM noted that host committees and municipal funds have evolved to the point where their roles in convention financing are increasingly similar but the Commission's rules had treated them differently. 68 FR at 18507. The NPRM sought public comment on whether host committees and municipal funds should be treated the same.

One discrepancy in the regulations relating to host committees and municipal funds was that the rules defined ''host committee,'' in 11 CFR 9008.52(a), but did not define ''municipal fund.'' 68 FR at 18507–08. The NPRM proposed to add a definition of ''municipal fund'' in new paragraph (c) of 11 CFR 9008.50, and to move the definition of ''host committee'' from 11 CFR 9008.52(a) to paragraph (b) of 11 CFR 9008.50. The proposal defined a ''municipal fund'' as ''any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government.''

The NPRM stated that any municipal fund that accepted donations and made disbursements related to convention activities would be required, under the proposed definition, to use a separate account for such purposes. Comment was sought on whether any other restrictions should be imposed on municipal funds to ensure that funds received or disbursed by municipal funds are used solely for the purpose of promoting the city and its commerce, such as limiting them to accounts subject to audit by State or local public agencies.

No commenters addressed this topic. The Commission believes that it is helpful to add a definition of ''municipal fund.'' Accordingly, the Commission has decided to adopt the proposed definition of ''municipal fund,'' which is located in paragraph (c) of 11 CFR 9008.50. This provision defines a municipal fund as a fund or account of a government agency, municipality, or municipal corporation.

The definition distinguishes a municipal fund from a host committee, in part, by limiting municipal funds to those funds or accounts of a government agency, municipality, or municipal corporation, and ''whose receipt and use of funds is subject to the control of officials of the State or local government.'' When engaged in activities that promote an area and its commerce, State and local governments participate in a wide variety of organizations that often permit the private sector to participate in some role. The Commission intends that municipal funds will be limited to the group of such organizations whose funds are under the control of State or local government officials acting in their official capacities when they receive and disburse funds. Any organizational structure that includes public officials in some capacity but does not keep the funds under governmental control cannot qualify as a municipal fund, but may qualify as a host committee. For example, if a local civic association includes a city's mayor as an officer, but the association's funds are not maintained in a city account, the local civic association could not be a municipal fund, but it could be a host committee, if it met the requirements of new 11 CFR 9008.50(b).

The Commission has decided to move the definition of ''host committee'' to paragraph (b) of 11 CFR 9008.50, so that the definitions are grouped together.

11 CFR 9008.51—Registration and Reports

11 CFR 9008.51(a)(1)—Registration Requirements

The Commission has decided to make a number of changes to the host committee and municipal fund registration and reporting requirements. With respect to the registration requirements, 11 CFR 9008.51(a) is being revised to require host committees and municipal funds to file FEC Form 1 (Statement of Organization) within ten days of the date on which the national party chooses the convention city or ten days after the host committee or municipal fund is formed, whichever date occurs later.

These new registration requirements differ from the former requirements in two respects. First, the former provision required host committees and municipal funds to file a ''Convention Registration Form,'' not a Statement of Organization. Second, the former provision required host committees and municipal funds to register within ten days of the date on which the party selected the convention city.

The NPRM sought comment on the change in the registration deadline, as well as an alternative deadline that would have required host committees and municipal funds to register within 10 days of when they first solicit or accept donations or make disbursements for convention activities. No commenters specifically addressed the proposed changes to the host committee and municipal fund registration requirements in 11 CFR 9008.51(a).

With respect to the proposal to require host committees and municipal funds to register using FEC Form 1, the Commission notes that host committees and municipal funds typically use this form already. Therefore, the Commission has decided to adopt the proposed change requiring host committees and municipal funds to register using Form 1.

The Commission is adopting the proposal to require host committees and municipal funds to file within 10 days of their formation or within 10 days of convention city selection, whichever date occurs later. This change represents a more realistic timeframe, in that it accounts for the possibility that not all host committees or municipal funds are established within 10 days of when the convention city is selected. The Commission is not adopting the alternative that would have required host committees and municipal funds to register within 10 days of soliciting, accepting, or disbursing funds for convention activities. The alternative could have made it difficult to determine when particular host committee or municipal fund registration statements would actually be due.

11 CFR 9008.51(a)(3)—Submission of Convention Committee, Host Committee, and Municipal Fund Agreements

As discussed above, the NPRM proposed to require convention committees, host committees, and municipal funds to submit a copy of all agreements that any one of those organizations makes with the city, county, or State hosting the convention or any of the other convention-related organizations. *See* Explanation and Justification for 11 CFR 9008.3(b)(ii), above; *see also* 68 FR at 18512. For the reasons stated above, the Commission has decided to adopt this proposed rule.

Accordingly, the Commission is revising 11 CFR 9008.51 to require host committees and municipal funds to submit any and all such written contracts and agreements with the report covering the reporting period during which the agreement is executed. *See* 11 CFR 9008.51(a)(3). As explained below, this will usually be the post-convention report. Host committees and municipal funds must also submit any subsequent modifications to a previous agreement. However, host committees and municipal funds need not submit contracts made with convention committees that have already been filed by the convention committees themselves. No commenters addressed these revisions.

11 CFR 9008.51(b)—Reporting Requirements

The NPRM proposed a number of changes to the reporting requirements applicable to host committees and municipal funds in 11 CFR 9008.51(b) and (c). First, the NPRM proposed to apply the same reporting requirements to both host committees and municipal funds. Under previous Commission regulations, different reporting requirements applied to host committees and municipal funds. While host committees were required to file a post convention report on FEC Form 4, municipal funds were only required to file a post convention letter, which did not need to contain all of the information required on FEC Form 4. *Compare* former 11 CFR 9008.51(b)(1) *with* former 11 CFR 9008.51(c). In addition, host committees were required to continue filing quarterly reports as long as they continued to accept funds or make disbursements after filing the post convention report, but municipal funds were not subject to such a requirement. Former 11 CFR 9008.51(b)(2). Furthermore, host committees were required to file a final report within 10 days of ceasing reportable activity, but municipal funds were not. Former 11 CFR 9008.51(b)(3).

One commenter contended that it was in the public interest to require municipal funds to file reports with the same frequency and containing the same level of detail regarding receipts and disbursements as those filed by host committees. The Commission agrees, especially because it is dropping the former restrictions on municipal fund fundraising and permitting municipal funds to accept donations under the same conditions as host committees. *See* Explanation and Justification for 11 CFR 9008.53. Accordingly, the Commission is revising 11 CFR 9008.51 to state that the reporting provisions in paragraphs (b)(1), (2), and (3) apply to both host committees and municipal funds.

The NPRM also proposed two other changes to the host committee reporting requirements in 11 CFR 9008.51(b)(1). First, noting that paragraph (b)(1) of § 9008.51 did not provide a date for the close of books for host committees' post-convention reports, the NPRM proposed revising 11 CFR 9008.51(b)(1) to set the close of books as 15 days prior to the date of filing. No commenters specifically addressed this date. The Commission believes that the proposed time frame is reasonable, in that it should provide sufficient time for host committees and municipal funds to prepare their reports. In addition, the Commission believes that it makes sense to apply the same time frame to host committees and municipal fund reports that currently applies to convention committee reports under 11 CFR 9008.3(b)(2)(ii). Accordingly, the Commission is revising 11 CFR 9008.51(b)(1) to establish the close of books for host committee and municipal fund reports as 15 days prior to the due date for filing these reports.

Second, the NPRM proposed revising 11 CFR 9008.51(b)(1) to require that reports filed pursuant to 2 U.S.C. 437 must contain the information specified in 11 CFR part 104. The statutory authority for 11 CFR part 104 is based in 2 U.S.C. 434. Host committee and municipal fund reporting is required by 2 U.S.C. 437, which explicitly allows the Commission to require a ''full and complete financial statement, in such form and detail as it may prescribe.'' Requiring host committee and municipal fund reports to be presented in the same format as other reports that are filed with the Commission significantly enhances the public disclosure of convention-related financial activity. No commenters addressed this proposed change. Accordingly, the Commission is revising 11 CFR 9008.51(b)(1) to state that host committee and municipal fund post-convention reports must ''disclose all the information required by 11 CFR part 104.''

The NPRM also sought comment on whether requiring host committees and municipal funds to file quarterly reports after the 60-day post-convention report is required by and consistent with 2 U.S.C. 437, which refers to a single financial statement. No commenters addressed this question.

The Commission concludes that it does have the authority to require further reports by municipal funds. Section 437 states that host committees and municipal funds must, ''within 60 days following the end of the convention (but not later than 20 days prior to the date on which presidential and vice-presidential electors are chosen), file with the Commission a full and complete financial statement, in such form and detail as [the Commission] may prescribe, of the sources from which it derived its funds, and the purpose for which such funds were expended.'' 2 U.S.C. 437. The Commission's experience with convention financing indicates that it is often not possible for host committees and municipal funds to provide a full and complete financial statement within the prescribed time frame because receipts and invoices pertaining to the convention tend to continue to arrive after the convention has ended and even after the November general election. The Commission believes that 2 U.S.C. 437 in conjunction with 26 U.S.C. 9009, which grants the Commission the authority to require the submission of ''such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this chapter,'' provides the Commission with sufficient statutory authority to require both host committees and municipal funds to continue filing reports with the Commission as long as they receive or spend funds relating to the conventions. Furthermore, the Commission notes that the reporting obligation beyond the initial report is expressly conditioned on further convention-related activity, which means that the obligation will only apply when the initial report is *not* a ''full and complete financial statement,'' as required by 2 U.S.C. 437.

The NPRM also sought comment on the form that convention committees, host committees, and municipal funds should be required to use for their reports. Convention committees and host committees were required to report using FEC Form 4, while municipal funds were not required to use any particular form. *See* 11 CFR

9008.3(b)(2)(i) (convention committees); former 11 CFR 9008.51(b)(1) (host committees); and former 11 CFR 9008.51(c) (municipal funds). The NPRM indicated that the Commission was considering requiring convention committees, host committees, and municipal funds to use FEC Form 3P instead of FEC Form 4. FEC Form 3P is the report of receipts and disbursements filed by Presidential and Vice-Presidential candidates.

No commenters specifically addressed this issue. Given the familiarity that convention committees already have with FEC Form 4, the Commission has decided that the most prudent course is to continue requiring convention committees and host committees to file FEC Form 4. Accordingly, the Commission has decided to retain the references to Form 4 in 11 CFR 9008.3(b)(2)(i) and revised 11 CFR 9008.51(b)(1). The requirement to file using FEC Form 4 will also apply to municipal funds. This is consistent with the Commission's other parallel treatment of host committees and municipal funds as similar.

11 CFR 9008.51(c)—Post Convention Statements by State and Local Government Agencies

States, cities, and other local government agencies often provide facilities and services to Presidential nominating conventions under 11 CFR 9008.53, which are in addition to what may be provided by a separate municipal fund. When States, cities and local governments provide such facilities and services, they generally file letters with the Commission identifying the categories of facilities and services provided for the convention and the origin of the funds used for such facilities and services under 11 CFR 9008.51(c). Because the NPRM proposed that municipal funds would be made subject to the same reporting requirements as host committees under 11 CFR 9008.51(b), the NPRM proposed deleting 11 CFR 9008.51(c). No comments were received on this issue.

The Commission has decided, instead, to retain 11 CFR 9008.51(c) and revise it to require these letters to be filed only by those government agencies at the State, municipal, or local levels, or any other political subdivision, that use their general revenues to provide convention facilities or services pursuant to 11 CFR 9008.53. If a city directly makes convention expenditures with its own funds, it must report under 11 CFR 9008.51(c) but would not be required to report the same transactions on a municipal fund report under § 9008.51(b).

11 CFR 9008.52—Receipts and Disbursements of Host Committees; Proposed Restructuring of 11 CFR 9008.52

The Commission has decided to move the definition of ''host committee'' from 11 CFR 9008.52(a) to 11 CFR 9008.50(b). *See* Explanation and Justification for revised 11 CFR 9008.50, above. Accordingly, the Commission is restructuring 11 CFR 9008.52 as follows: Former paragraph (b) is being redesignated as paragraph (a) and former paragraph (c) is being redesignated as paragraph (b).

Proposed Relocation of Commercial Vendor Provisions

The NPRM proposed moving the provisions in former 11 CFR 9008.9(b) and (c) to 11 CFR 9008.52(a). However, because the Commission has decided not to amend 11 CFR 9008.9, the corresponding changes proposed for 11 CFR 9008.52 are unnecessary. *See* Explanation and Justification for 11 CFR 9008.55, below.

Proposed Revisions to Permissible Expenses

The NPRM proposed a number of substantive revisions to the list of permissible host committee expenses in former 11 CFR 9008.52(c)(1).[3] The proposed revisions were intended to clarify and add specificity to the list of permissible expenses.

The NPRM proposed combining the expenses in former 11 CFR 9008.52(c)(1)(i) and (c)(1)(x). Former § 9008.52(c)(1)(i) allowed host committees to defray expenses incurred for the purpose of promoting the suitability of the city as a convention site whereas § 9008.52(c)(1)(x) permitted host committees to provide accommodations and hospitality for those responsible for choosing the convention site. The proposed combined list would have permitted host committees and municipal funds to ''defray those expenses incurred for the purpose of promoting the city as a convention site, including accommodations and hospitality for officials and employees of the convention and national party committees who are responsible for choosing the sites of the conventions.''

The NPRM also proposed narrowing permissible host committee expenses for providing convention committees with the use of an auditorium or convention center. Whereas the former rule at 11 CFR 9008.52(c)(1)(v) permitted host committees and municipal funds to provide both construction- and convention-related services for convention committees, the proposal sought to limit them to providing only construction-related services that are clearly related to designing, creating, or installing the physical or technological infrastructure of the convention facility. The proposed rule would have deleted the reference to convention-related services and added a non-exhaustive list of permissible construction-related services.

In addition, the NPRM proposed narrowing the description of transportation services that may be provided by host committees and municipal funds in former 11 CFR 9008.52(c)(1)(vi) to permit the provision of only those transportation services that were made ''widely available to convention delegates and other individuals attending the convention.'' *See* proposed 11 CFR 9008.52(b)(6). Conversely, the proposed rules would have broadened the types of law enforcement services that host committees and municipal funds may provide to allow not only those necessary ''to assure orderly conventions'' but also other ''law enforcement and security services, facilities, and personnel, including tickets, badges, and passes.''

Another proposal would have addressed the provision related to hotel rooms in former 11 CFR 9008.52(c)(1)(ix). Whereas the former and current provision states that host committees and municipal funds may provide hotel rooms ''at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention,'' the proposed provision would have permitted the provision of hotel rooms at the rate paid by the host committee or municipal fund. This proposal would have allowed host committees and municipal funds to pass through to convention committees any discounts they received based on the number of rooms rented but would have prohibited host committees or municipal funds from subsidizing the actual cost of such accommodations.

The NPRM also proposed eliminating the final, catchall expense category in former 11 CFR 9008.52(c)(1)(xi), which allowed host committees and municipal funds to provide ''other similar convention-related facilities and services,'' and proposed adding a new list of *impermissible* host committee and municipal fund expenses. Proposed 11 CFR 9008.52(c)(1) would have

[3] Under both previous and revised 11 CFR 9008.53(b)(1), municipal funds are permitted to pay the same types of expenses as host committees.

prohibited host committees and municipal funds from providing ''anything of value'' to a convention committee, national party committee, or other political committee, except those items that were expressly described in proposed 11 CFR 9008.52(b)(1) and (b)(5) through (b)(8). Proposed 11 CFR 9008.52(c)(2) would have prohibited host committees and municipal funds from defraying any expenses related to ''creating, producing, or directing convention proceedings.''

The NPRM also sought public comment on whether there was any need to continue to provide a list of permissible convention expenses, or whether the definition of ''convention expenses,'' standing alone, gives sufficient guidance to convention committees regarding what they may or may not pay. Comment was also sought on whether to refine the current list of permissible convention expenses, by deleting some examples and/or adding others.

The Commission also sought comment on whether BCRA requires that the list of permissible host committee and municipal fund expenses in former 11 CFR 9008.52 must be modified to ensure that convention committees will not receive ''a contribution, donation, or transfer of funds or any other thing of value * * * that are not subject to the limitations, prohibitions, and reporting requirements of (FECA).'' 2 U.S.C. 441i(a)(1). In many of the transactions contemplated by 11 CFR 9008.52(c)(1), host committees provide something of value to convention delegates, other attendees, press, local businesses, and the local community, but in these transactions the convention committee is a bystander, not a recipient of something of value. When a host committee provides, for example, a shopping and dining guide, to convention attendees, it is difficult to conclude that the convention committee received anything of value. One commenter advocated a variation on this approach.

In addition to the proposed substantive revisions, the NPRM proposed two alternative locations for the revised list of permissible host committee and municipal fund expenses located in former 11 CFR 9008.52(c)(1). The list of permissible convention committee expenses in 11 CFR 9008.7(a)(4) would have been affected by the proposed reorganization as well. The NPRM proposed either deleting the non-exhaustive list of thirteen permissible convention expenses that may be paid by convention committees, or in the alternative retaining the list of permissible convention expenses but moving them to a new section.

With respect to the proposed substantive and structural changes, a number of commenters believed that the current regulations work well and are not in need of additional clarification. These commenters expressed concern that any changes to the list of permissible expenses this close to the 2004 election would be extremely disruptive, would invite confusion, and would interfere with the obligations that host committees have already agreed by contract to undertake for the 2004 national nominating conventions. In their opinion, no deficiencies in the current list that warrant either of the proposed alternative changes had been identified. A number of the commenters also stated that there was no indication that Congress, in enacting BCRA, intended to restrict or modify the range of permissible convention committee, host committee, and municipal fund expenses prior to BCRA.

After carefully considering the concerns raised by these commenters, the Commission has decided not to adopt any of the proposed substantive or structural revisions to the list of permissible convention committee, host committee and municipal fund expenses. The Commission is mindful of the potentially disruptive effect of modifying existing regulations regarding the expenses that may be paid by convention committees, host committees, and municipal funds in such close proximity to the 2004 conventions. *See Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49358 (Sept. 13, 1999) (declining to modify the existing list of permissible convention committee and host committee expenses ''given that the party committees have already entered into contractual agreements with the sites selected''). Accordingly, the list of permissible host committee and municipal fund expenses will remain in 11 CFR 9008.52. The list is substantively identical to that in current 11 CFR 9008.52(c)(1), however, as explained above, it will be re-designated as 11 CFR 9008.52(b) in light of other changes to section 9008.52.

With respect to the reorganization of permissible convention expenses in 11 CFR 9008.7(a)(4), the Commission is persuaded that it should retain the current non-exhaustive list of permissible convention expenses. In addition, rather than relocating the list to two different paragraphs in a new section, the Commission has decided to keep the list intact in paragraph (a)(4) of 11 CFR 9008.7. The Commission concludes that the list of permissible convention expenses has worked reasonably well in practice. The Commission also concludes that the proposed changes would not add sufficient clarity or precision to justify the possible confusion and disruption they may engender at a time when preparations for the 2004 conventions are well advanced, and further concludes that none of the proposed changes are required by BCRA.

Definition of ''Local'' Businesses, Labor Organizations, Other Organizations, and Individuals

The NPRM proposed to eliminate the requirement, in former 11 CFR 9008.52(c)(1) and 11 CFR 9008.53(b)(1), that only ''local'' businesses, labor organizations, other organizations, and individuals are permitted to make donations to host committees and municipal funds.

The NPRM sought comment on whether eliminating that restriction would make it more feasible for smaller or mid-sized cities to host a Presidential nominating convention. Comment was also sought on two alternative proposals. Under the first alternative proposal, the locality requirements in former 11 CFR 9008.52(c)(1) and (c)(2) and former 11 CFR 9008.53(b)(1) and (b)(2) would have been retained, but modified to permit only those donations made by ''individuals who maintain a local residence or who work for the local office of a business, labor organization, or other organization.'' Under the second alternative approach, the locality restrictions in both 11 CFR 9008.52(c)(1) and 11 CFR 9008.53(b)(1) would have been revised to permit donations only from those individuals who have a local residence.

Most of the commenters who addressed this issue favored deletion of the locality requirement. They pointed out that the physical location of a business is a poor indicator of the extent of a company's commercial interests in a particular geographic region, especially in light of the increasingly global nature of the economy. These commenters believed the restriction frustrated the ability of host committees to raise funds for the legitimate purpose of promoting the host city. They argued that deleting this restriction would make it easier for smaller cities, without large local business communities, to bid successfully for a future convention.

These commenters also maintained that donors to host committees and municipal funds are motivated by legitimate commercial considerations or

by civic pride, not by political considerations. They contended that many businesses that do not maintain an office in or near the convention city nevertheless have a legitimate commercial interest in supporting large-scale events such as conventions in the host city, such as developing business in the convention city or showcasing their products to a prominent national audience. They pointed out that many corporations also make sizeable donations to host committees for other large-scale events such as host committees for the Super Bowl and the Olympics. One commenter suggested that the motive of those making donations to host committees is irrelevant because such donors have no control over how the host committee spends the funds.

On the other hand, a different commenter opposed the Commission's proposal to delete the locality requirement in 11 CFR 9008.52(c)(1) and 11 CFR 9008.53(b)(1), expressing the view that the locality restriction already was too permissive and should not be eliminated.

After careful consideration of the viewpoints expressed by the commenters on this issue, the Commission has decided to eliminate the locality requirement from 11 CFR 9008.52 and 11 CFR 9008.53. The Commission is persuaded that this restriction no longer serves a meaningful purpose because the disbursements that host committees and municipal funds are permitted to make are consistent with the narrow purpose of promoting commerce in, and the suitability of, the convention city. The Commission notes that the requirement that donors be local has resulted in reliance on Metropolitan Areas to draw difficult and seemingly arbitrary distinctions in specific cases. Accordingly, under the revised rules at 11 CFR 9008.52(b) (host committees) and 11 CFR 9008.53(a) (municipal funds), businesses, labor organizations, other organizations, and individuals are permitted to donate funds or make in-kind donations to host committees and municipal funds, regardless of their geographic locations.

11 CFR 9008.53—Receipts and Disbursements of Municipal Funds

As discussed in greater detail above, the NPRM proposed to eliminate many of the differences in the manner that the Commission's regulations treat host committees and municipal funds. (*See* Explanation and Justification for 11 CFR 5008.50, above.) One of these differences was that municipal funds were subject to certain fundraising requirements that did not apply to host committees. Former 11 CFR 9008.53(b)(1)(i) and (ii) provided that neither the municipal fund itself nor the donations the municipal fund received or solicited could be restricted to use in connection with a particular convention. Host committees were not subject to these fundraising restrictions.

These disparate requirements limited the ability of host committees and municipal funds to raise funds in concert with one another. The NPRM acknowledged that the restrictions on municipal fund fundraising were based on Commission decisions in Advisory Opinion (''AO'') 1982–27 and AO 1983–29. Comment was sought on deleting these requirements on municipal funds. In the alternative the NPRM proposed retaining the restrictions and clarifying the appropriate standard for determining whether a municipal fund itself, or the funds it receives, are impermissibly restricted to the Presidential nominating convention.

No commenters addressed this topic. The Commission has concluded that the former restrictions serve little or no purpose, while, at the same time, they unnecessarily hamper the ability of host committees and municipal funds to undertake joint fundraising activities. Accordingly, the Commission has decided to eliminate the restrictions on municipal fund fundraising in former 11 CFR 9008.53(b)(1)(i) and (ii).

The NPRM also proposed eliminating the requirement, in 11 CFR 9008.53(b)(1), that only ''local'' businesses, labor organizations, other organizations, and individuals are permitted to make donations to municipal funds. For the reasons stated above, the Commission has decided to eliminate this limitation on donations to municipal funds as well as host committees. *See* Explanation and Justification for 11 CFR 9008.52.

11 CFR 9008.55—Funding for Convention Committees, Host Committees and Municipal Funds

The Commission is adopting a new §9008.55 to explain the application of BCRA to convention committees, host committees, and municipal funds. This new regulation should be viewed in the overall context of the legal structure of public financing and the development of the Commission's regulatory approach regarding the role of host committees and municipal funds.

The national committees of both major and minor political parties are entitled to receive public funds to defray their expenses incurred in connection with a Presidential nominating convention under 26 U.S.C. 9008(b). Major party committees may receive an inflation-adjusted payment from the Presidential Election Campaign Fund for their national nominating conventions. 26 U.S.C. 9008(b)(1).[4] For the 2004 conventions, the major party committees received $14,880,000 in July 2003 and are entitled to receive an additional payment in 2004 for an inflation adjustment, subject to all applicable requirements.[5] A national committee of a major party may not make expenditures related to the convention that exceed the expenditure limitations, which are equal to the full amount of the payment to major parties. 26 U.S.C. 9008(d). Thus, the major party convention committees that accept public funding may not receive any contributions, as defined in 2 U.S.C. 431(8), that would count towards their expenditure limit if they accepted the full Federal payment.

Development of Commission Rules on Host Committees and Municipal Funds

As mentioned in the discussion of 11 CFR 9008.50, above, the Commission has historically allowed host committees and municipal funds to raise and spend money for activities related to conventions. The NPRM provided a detailed history of the development of the Commission's policy in this area. Although a convention committee is precluded from receiving contributions, the Commission has held that host committees and municipal funds may solicit and receive funds because such funds ''are not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city.'' *Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971,* H.R. Doc. No. 95–44, 136 (1977).

Similarly, the Commission has allowed donations to these entities from sources prohibited from making contributions under 2 U.S.C. 441b, because such donations are ''sufficiently akin to commercial transactions to fall outside the scope of that prohibition.'' *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential*

[4] Minor party committees may receive a proportional amount of that payment based on the number of votes the party's candidate received in the last presidential election compared to the average number of votes received by the major party candidates. 26 U.S.C. 9008(b)(2). No candidate (other than the major party candidates) received a sufficient number of votes in the 2000 presidential general election to provide his or her party with minor party status in 2004.

[5] In 2000, the Democratic and Republican National Committees each received $13,512,000 for their national nominating convention.

Nominating Conventions, 44 FR 63036, 63037–38 (Nov. 1, 1979).

The Commission has repeatedly endorsed the use of these funds for convention-related activities. Recent testimony on behalf of the 2004 host committees amply supports the Commission's long-held view that ''businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes.'' *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,* 59 FR 33606, 33615 (June 29, 1994).

Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host Committees and Municipal Funds

Title I of BCRA includes several provisions potentially applicable to Presidential nominating convention financing. Under BCRA, ''[a] national committee of a political party * * * may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of (FECA).'' 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are ''directly or indirectly established, financed, maintained, or controlled'' by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2).

BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising any funds for, or making or directing any donations to, certain tax exempt organizations. 2 U.S.C. 441i(d). This prohibition extends only to organizations that are described in section 501(c) of the Internal Revenue Code of 1986 and that are exempt from taxation under section 501(a) of such Code (or that have submitted an application for determination of tax exempt status under such section) (''501(c) organizations'') and that make ''expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity).'' *Id.*

BCRA also prohibits Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office that do not comply with the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). With respect to fundraising for non-profit organizations, BCRA provides two exceptions. Under the exception relevant here, BCRA permits Federal candidates and officeholders to make ''general solicitations'' of funds on behalf of organizations described in section 501(c) of the Internal Revenue Code, other than entities whose principal purpose is to conduct certain types of Federal election activity (including voter registration, voter identification, and get-out-the-vote activity), where the solicitations do not specify how the funds will or should be spent. 2 U.S.C. 441i(e)(4)(A).[6] Convention committees, host committees, and municipal funds are unlikely to engage in these types of Federal election activity.

11 CFR 9008.55(a)—Convention Committees Are Subject to 2 U.S.C. 441i(a)(1)

Convention committees are, as a matter of law, entities directly established, financed, maintained, or controlled by national party committees. The Commission's regulations at 11 CFR 9008.3(a)(2) require national party committees to ''establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's Presidential nominating convention.'' In addition, under 11 CFR 9008.3(a)(2), convention committees are required to receive the national party's entitlement to public funds and are responsible for making ''[a]ll expenditures on behalf of the national committee for convention expenses.'' Typically, convention committees list the national party committees as an affiliated committee on their Statements of Organization.

Convention committees are also ''agents'' of the national party committees. Under the Commission's definition of ''agent,'' a principal cannot be held liable for the actions of an agent unless (1) the agent has actual authority, (2) the agent is acting on behalf of the principal, and (3), with respect to national party committees, the agent is soliciting, directing, or receiving any contribution, donation or transfer of funds on behalf of the national party committee. 11 CFR 300.2(b). Given that a convention committee is authorized by law to receive the national party committee's convention funds, this aspect of their relationship is sufficient to make the convention committee an agent of the relevant national party committee under 11 CFR 300.2(b).

The NPRM proposed that BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and spending funds that do not comply with the source prohibitions and amount limitations should apply to convention committees by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). One of the national party committees commenting on this proposal agreed that convention committees are required by law to be established by national party committees, which triggers 2 U.S.C. 441i(a)(2). No other commenter addressed this issue.

The Commission concludes that as a matter of law convention committees are subject to 2 U.S.C. 441i(a)(1) and 11 CFR 300.10(a) by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.2(b), (c) and 11 CFR 300.10(c). Accordingly, under new 11 CFR 9008.55(a), all convention committees established pursuant to 11 CFR 9008.2(a)(2) are subject to the national party committee prohibitions in 11 CFR 300.10(a).

11 CFR 9008.55(a)—Donations From Host Committees and Municipal Funds to Convention Committees

The Commission sought comment on whether BCRA bars convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds. The current rules on permitted expenditures of host committees and convention committees overlap, which reflects the fact that some host committee disbursements are for goods or services related to the conduct of a convention, and not merely the promotion of their cities. *See, e.g.*, revised 11 CFR 9008.52(b)(5), discussed above. There was no consensus among the commenters on this issue.

Several commenters argued that there is no language in BCRA that compels or even anticipates changes to the long-standing regulations regarding convention financing. Some commenters also emphasized the non-political nature of host committee activities and that nothing in BCRA

[6] BCRA also permits Federal candidates and officeholders to make ''specific solicitations'' on behalf of organizations described in Section 501(c) of the Internal Revenue Code, where the entities' principal purpose is to conduct certain Federal election activities or where the solicitation is ''explicitly to obtain funds'' for certain Federal election activities. 2 U.S.C. 441i(e)(4)(B). Such ''specific solicitations'' may only be made to individuals in amounts not exceeding $20,000 per calendar year. *Id.*

requires or justifies the Commission to alter its conclusion that donations to host committees are commercially, not politically, motivated. According to some commenters, the provision of goods and services by a host committee has never been considered an in-kind contribution, and BCRA did not amend the statutory definition of in-kind contribution in 2 U.S.C. 431(8)(A)(i). A commenter also pointed out that another provision of BCRA repealed certain Commission regulations. Because Congress did not similarly address the convention financing regulations, its silence is ''a conclusive indication that there was no Congressional intent that the Commission modify these regulations in any way,'' according to this commenter. One commenter argued that BCRA's prohibitions in 2 U.S.C. 441i(a) are limited to national party committees, their agents, and any entity that is established, financed, maintained, or controlled by the national party committees. In this commenter's view, host committees do not constitute any of these covered persons, so host committees should be permitted to continue accepting and using non-Federal funds to pay for certain convention related costs.

Other commenters advocated for the exact opposite position, citing BCRA's unqualified prohibition on the national party committees' accepting any non-Federal funds. These commenters construed both FECA and BCRA to prohibit a convention committee from accepting in-kind contributions from a host committee funded by corporate donations. These commenters also contended that conventions have become vehicles for the infusion of massive amounts of non-Federal funds into both political parties and to their candidates and officeholders. Another commenter argued that the changes to the Commission's host committee regulations in 1977, 1979, 1994, and 1999 make continued reliance on the original justification unwarranted. More than 1,100 timely, essentially identical, comments that the Commission received by e-mail expressed support for the use of tax dollars to fund party conventions ''precisely so that parties may turn away other sources of inappropriate funds.''

For many of these same reasons, a petition for rulemaking sought the repeal or revision of the Commission's regulations that permit host committees to accept corporate and labor organization funds and to use these funds for expenses incurred in conducting a nominating convention.

One commenter presented data that it claimed challenged some of the assumptions upon which the Commission's host committee rules are based. This commenter argued that the tremendous escalation of private contributions to finance host committees, traced over the course of several conventions, is inconsistent with the assumptions that the host committee and municipal fund exception to the expenditure limit is a ''very narrow exception'' and that such donations are not politically motivated. However, the commenter also documented that party leaders at the State and local level have been active in raising funds for conventions held in their cities to nominate candidates of the opposing party.

Other commenters challenged the data and conclusions drawn by this commenter. They argued that the increase in corporate funding reflects a general trend of increasing corporate sponsorship for large-scale civic events. A decreased willingness or ability of State and local governments to assist endeavors of this scale was also cited as a potential explanation for rising private donations.

The Commission's consideration of these issues begins with consideration of BCRA's language. Nothing in the text of BCRA, however, expressly addresses convention financing.

The Commission then looked to BCRA's legislative history on these issues. In light of the sparse and inconclusive legislative history, the NPRM sought comment as to whether Congress intended BCRA to change the rules for convention financing, and it cited the very few statements on this topic made during the Senate's consideration of BCRA. For example, Senator Mitch McConnell said the bill ''will end national party conventions as we have known them.'' 148 Cong. Rec. S2122 (daily ed. Mar. 20, 2002).

Only two commenters addressed these remarks. One noted that the Supreme Court and other courts have found the views of legislative opponents to be an unreliable guide to the construction of a statute, citing *National Labor Relations Board* v. *Fruit & Vegetable Packers, Local 760,* 377 U.S. 58, 66 (1964); *Bryan* v. *United States,* 525 U.S. 384, 196 (1998) (quoting *Schwegman Bros.* v. *Calvert Distillers Corp.,* 341 U.S. 384, 394–95 (1951)); and *Illinois Commerce Comm'n* v. *Interstate Commerce Comm'n,* 879 F.2d 917, 923 n. 47 (D.C. Cir. 1989). The only other commenter to address these remarks stated that they show that Congress understood that BCRA's national party and Federal candidate provisions would prohibit non-Federal funds in relation to Presidential nominating conventions.

Because of the scarcity of comment indicating the pre-enactment intent of those who wrote or voted for the bill, the Commission affords little weight to the single passing comment made in the waning hours of floor debate. *See NLRB* v. *Fruit & Vegetable Packers, Local 760,* 377 U.S. 58, 66 (1964) (noting that legislative opponents, ''[i]n their zeal to defeat a bill, * * * understandably tend to overstate its reach'').

BCRA's principal sponsors in Congress did not file comments in response to the NPRM in this rulemaking. However, in comments filed in the Non-Federal Funds rulemaking, the sponsors did address convention financing. The Commission declines to rely on a single post-enactment statement in a separate rulemaking that unspecified ''tight restrictions'' exist as a basis to determine that BCRA effectively prohibits a major source of funding for the Presidential nominating conventions.

In considering whether BCRA bars convention committees from accepting in-kind donations from host committees and municipal funds, the Commission considered several other factors as well. Title I of BCRA, entitled ''Reduction of Special Interest Influence'' and the cornerstone of BCRA, begins with the prohibition on national party committees. BCRA, sec. 101(a), 116 Stat. at 82. Presidential nominating conventions are the only publicly funded endeavors of a national party committee. Underlying the convention public funding program is an elaborate statutory regime, 26 U.S.C. 9008, which Congress created. Moreover, Members of Congress often play substantial roles in Presidential nominating conventions. In fact, since 1996, all Democratic Members of Congress have served as automatic delegates to their party's convention, according to one of the commenters.

The Commission's regulations on host committees have been in effect since the earliest days of the Commission. Despite other changes to the host committee regulations, the Commission has consistently maintained that donations of funds to host committees are, as a matter of law, distinct from other donations by prohibited sources in that they are motivated by a desire to promote the convention city and hence are not subject to the absolute ban on corporate contributions in 2 U.S.C. 441b. This conclusion is buttressed by the fact that frequently members of the opposite political party have played prominent and active roles in convention host committees. For example, in 2000 David L. Cohen, a

longtime aide to Ed Rendell (who was then mayor of Philadelphia, and now is the Democratic Governor of Pennsylvania), chaired the host committee for the Republican National Convention. Mr. Rendell was also actively involved in the 2000 Philadelphia host committee's activities. In addition, Noelia Rodriguez, former Deputy Mayor to Mayor Richard Riordan, and now Press Secretary for First Lady Laura Bush, served as Executive Director of the Los Angeles host committee for the 2000 Democratic National Convention. Furthermore, the co-chair of the host committee for the 1996 Democratic National Convention in Chicago was Richard Notebaert, who has been a major contributor to Republican candidates and to the Republican Party. The fact that historically members of the opposite political party have played key roles in convention host committees strongly supports the Commission's conclusion that host committee activity is motivated by a desire to promote the convention city and not by political considerations. While it is always difficult to interpret Congressional silence, the Commission does note that BCRA specifically repealed another of the Commission's regulations, BCRA, sec. 214(b), 116 Stat. at 94, and yet did not similarly repeal or otherwise address the Commission regulations on convention financing. Congress has also declined other opportunities to disapprove of the Commission's regulations regarding host committees. These regulations were submitted to Congress in 1977, 1994, and 1999, and Congress has not taken action to invalidate the regulations. In those regulations, one of only two subparts is devoted to host committees and municipal funds, 11 CFR part 9008, subpart B, which provides host committees a legal prominence in the regulatory structure as well.

Courts have recognized that when it is not clear whether statutory amendments affect past agency interpretations, agencies are left with their ordinary ability to interpret the law as amended, subject to deferential judicial review. *See, e.g., Chisholm* v. *FCC,* 538 F.2d 349, 366 (D.C. Cir. 1976) (noting court's obligation to defer to agency's interpretation even if it is not the only interpretation permissible). Thus, the Commission must decide whether to maintain its interpretation of 2 U.S.C. 441b and 26 U.S.C. 9008(d) and extend it to 2 U.S.C. 441i(a) or to overturn the regulatory system governing convention financing.

In light of all of these specific circumstances described above—the absence in BCRA of an express reference to conventions, the dearth of legislative history on the subject of convention financing, the prominence of conventions for the parties, the role of Members of Congress in convention activities, the extensive, existing regulations for convention financing, and the Commission's long-standing regulatory position regarding host committee funds, which has never been repudiated by Congress—the Commission declines to interpret the general prohibitions in 2 U.S.C. 441i(a) to eliminate the Commission's discretion to interpret 2 U.S.C. 441b, 441i(a), and 26 U.S.C. 9008(d) to permit the financing regime established by its rules in 11 CFR part 9008.

In considering whether to maintain the current convention financing system, the Commission evaluated the relationship between the convention committee and the localities hosting the convention. This relationship is established by an arms-length agreement negotiated by independent actors. There is keen competition among cities to host conventions, and on more than one occasion, cities have sought the conventions of both major national parties. The highly detailed contract underlying this relationship calls for the city, its host committee, its municipal fund, or some combination of the three to provide very specific facilities and services to the convention committee in exchange for the convention committee agreement to bring the Presidential convention to that city instead of any other. In turn, the city and region receive a significant economic benefit from the commerce that directly results from the convention.

For these reasons, the Commission concludes that convention committees may continue to receive in-kind donations from host committees and municipal funds of the convention expenses described in 11 CFR 9008.52. The Commission is adopting new 11 CFR 9008.55(a), stating in part that convention committees may accept in-kind donations that are in compliance with 11 CFR 9008.52 or 9008.53 from host committees or municipal funds. The Commission emphasizes that this interpretation is limited to the unique circumstances of Presidential nominating convention financing.

11 CFR 9008.55(b)—Historically, Host Committees and Municipal Funds Are Not ''Agents'' of National Party Committees

BCRA's ban on national parties soliciting, receiving, directing, transferring and spending non-Federal funds also applies to ''agents'' of national party committees. In the Non-Federal Funds Final Rules, the Commission defined an ''agent,'' for purposes of 11 CFR part 300, as ''any person who has actual authority, either express or implied * * * to solicit, direct, or receive any contribution, donation, or transfer of funds'' on behalf of a national committee of a political party. 11 CFR 300.2(b)(1)(i). Section 300.2(b)(1) therefore requires a fact-specific determination of the nature of any authority conferred by a national party committee.

The NPRM sought comment on whether host committees and municipal funds satisfy the definition of ''agents'' under 11 CFR 300.2(b)(1) with respect to the national political party committees or their convention committees. Comment was also sought on whether host committees and municipal funds should be treated as *per se* agents of national party committees. Such an approach would have limited permissible funds for a host committee or municipal fund to funds subject to FECA's limitations, prohibitions, and reporting requirements, regardless of how the host committees and municipal funds function in practice, and regardless of their actual relationship with the national party committees. An alternative approach would have treated host committees and municipal funds as *per se* not agents of national party committees and, therefore, not subject as a matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1), no matter how such host committees and municipal funds actually operate or interact with the national party committees. The commenters were divided on these issues.

Some commenters argued that host committees are independent from convention committees and should therefore not be considered agents of convention committees. Both host committees for the 2004 Presidential nominating conventions for the two major parties assured the Commission that their sole purpose was to encourage commerce in their cities and project a favorable image of their cities to the convention attendees. Counsel to one host committee explained that the committee conducts its own fundraising by its own staff and consultants, without national party committee participation. Counsel to the other host committee stated that the committee does not raise funds on behalf of the national party committee holding its convention in that city. Conversely, other commenters would treat host committees as agents. One commenter reasoned that because host committees raise funds to pay for convention

expenses, they are in essence raising funds for the convention committee, which would make host committees agents under 11 CFR 300.2(b)(1)(i).

The Commission has decided that the regulatory definition of ''agent'' of a national committee of a political party in 11 CFR 300.2(b)(1) sufficiently addresses the issue of when a host committee will be considered an agent of a national committee of a political party. It provides for a fact-specific determination, rather than a *per se* rule applicable to all host committees and municipal funds. Accordingly, the Commission has decided to adopt a new provision, 11 CFR 9008.55(b), simply stating that host committees and municipal funds are not agents of national party committees, except as provided in 11 CFR 300.2(b)(1).

The Commission's experience is that host committees typically do not have authority to solicit, direct, or receive any contribution, donation, or transfer of funds on behalf of the national committees of political parties. Thus, as long as host committees and convention committees conduct their affairs as they have in the past, host committees will not be considered agents of convention committees. National party committees, convention committees, and host committees should look to 11 CFR 300.2(b)(1) for guidance on under what circumstances a host committee would be an agent of a national party committee or convention committee. In effect, this approach amounts to a presumption that host committees and municipal funds are not agents of the national party committee. Such a presumption could be rebutted by a showing that the conditions of §300.2(b)(1)(i) or (ii) are satisfied by the relationship of a particular host committee and convention committee. If a particular host committee or municipal fund were to become an ''agent'' of a national party committee, then it, like the national party committee itself, would be prohibited from soliciting, receiving, directing, or spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1) and (2) and 11 CFR 300.10(a) and (c)(1).

11 CFR 9008.55(c)—Historically, Host Committees and Municipal Funds Are Not Entities ''Directly or Indirectly Established, Financed, Maintained, or Controlled'' by National Party Committees

The prohibitions on national party committees under BCRA also apply to entities that are ''directly or indirectly established, financed, maintained, or controlled'' by a national party committee. 2 U.S.C. 441i(a)(2); 11 CFR 300.10(c)(2). As noted above, 11 CFR 300.2(c) provides a non-exhaustive list of factors that may be considered in determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a national party committee. 11 CFR 300.2(c). *See Non-Federal Funds Final Rules,* 67 FR at 49084 (''the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA''). The resolution of this issue requires a fact-specific evaluation of the circumstances.

The NPRM sought comment on whether host committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered entities that are directly or indirectly established, financed, maintained, or controlled by the national party committees holding conventions in the relevant cities. The NPRM posed the corresponding *per se* alternatives on this question as it did on the agency issue, discussed above.

The commenters divided on this issue as well. Some commenters contended that the party committees control or coordinate with host committees so closely that host committees are affiliates of the national party committees. One commenter argued that the rules should not presume the organizations affiliated, but should instead rely on the factors listed in 11 CFR 300.2(c). This commenter also noted that two of those factors nearly always exist between the host committee and the convention committee. The two factors are that the party committees provide funds in a significant amount to host committees by virtue of selecting their cities to host the conventions, 11 CFR 300.2(c)(1)(vii), and that the party committees and host committees have a similar pattern of receipts that indicate a formal or ongoing relationship under 11 CFR 300.2(c)(1)(x). Other commenters disagreed; they argued that host committees are not directly or indirectly established, financed, maintained, or controlled under 11 CFR 300.2(c)(1). Both host committees cited detailed facts about their organizations to show that their organizations' relationship with the respective national party committees do not satisfy the factors listed in the definition of ''directly or indirectly establish, finance, maintain, or control.'' 11 CFR 300.2(c)(2)(i) through (x).

The Commission has decided that the regulatory definition of ''directly or indirectly establish, finance, maintain or control'' by a national committee of a political party in 11 CFR 300.2(c)(1) sufficiently addresses the issue. Section 300.2(c)(1) provides for a fact-specific evaluation of particular circumstances, rather than a *per se* rule applicable to all host committees and municipal funds. The Commission has decided therefore to adopt a new provision, 11 CFR 9008.55(c), stating that host committees and municipal funds are not directly or indirectly established, financed, maintained, or controlled by a national political party, except as provided in 11 CFR 300.2(c).

The Commission's experience is that host committees typically would not meet the affiliation test established in 11 CFR 300.2(c)(1). Thus, so long as host committees and convention committees conduct their affairs as they have in the past, host committees will not be considered directly or indirectly established, financed, maintained, or controlled by a national party committee. In effect, this approach amounts to a presumption that host committees are not directly or indirectly established, financed, maintained, or controlled by a national party committee. Such a presumption could be rebutted by a showing that the conditions of 11 CFR 300.2(c) are satisfied by the relationship of a particular host committee or municipal fund and a national party committee.

11 CFR 9008.55(d)—National Party Solicitations of Funds for Host Committees and Municipal Funds

BCRA prohibits national party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, financed, maintained, or controlled by them from soliciting any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). These prohibitions extend to funds solicited or directed for only certain tax-exempt organizations described in 26 U.S.C. 501(c) that make ''expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)'' and organizations described in 26 U.S.C. 527. *Id.*; 11 CFR 300.2(a).

A ''disbursement'' is defined, in 11 CFR 300.2(d), as ''any purchase or payment made by: (1) A political committee; or (2) any other person, including an organization that is not a political committee, that is subject to (FECA).'' FECA defines ''election'' to include nominating conventions. 2 U.S.C. 431(1)(B). The Commission's previous treatment of permissible host committee and municipal fund disbursements has been that they are not ''contributions or expenditures''

under 2 U.S.C. 441b because they are not made ''in connection with'' an election. However, BCRA reaches beyond expenditures and requires only ''disbursements in connection with an election'' to make a 501(c) organization subject to the prohibition in 2 U.S.C. 441i(d)(1). In light of these definitions and the previous treatment of host committees and municipal funds, the Commission sought comment on whether, as a matter of law, host committees and municipal funds make ''disbursements'' ''in connection with an election for Federal office,'' even as they adhere to the requirements in current 11 CFR 9008.52.

Two commenters stated that because host committees have not been considered political committees, host committees cannot be considered to make ''disbursements in connection with an election.'' However, the Commission notes that FECA defines ''political committee,'' in part, as any committee that receives contributions or makes *expenditures* aggregating in excess of $1,000 during a calendar year. 2 U.S.C. 431(4). The definitions of ''contribution,'' 2 U.S.C. 431(8)(A)(i), and ''expenditure,'' 2 U.S.C. 431(9)(A)(i), both include the requirement that the transaction be ''for the purpose of influencing any election for Federal office.'' Thus, the determination that host committees are not political committees does not resolve the question of whether they make ''*disbursements in connection with* a Federal election.''

One commenter also asserted that, in litigation challenging BCRA, the Commission explained that 2 U.S.C. 441i(d) reflected Congressional recognition that some tax-exempt organizations engage in campaign activities to benefit Federal candidates. The commenter suggested that because this purpose is not relevant to host committees, the Commission should not consider solicitations for host committees subject to 2 U.S.C. 441i(d). The Commission disagrees. The passage of the government's brief quoted by this commenter did not purport to be an exhaustive list of activities prohibited by 2 U.S.C. 441i(d). Indeed, later in the same brief, the wider effect of the provision was made clear: ''Moreover, donations solicited or directed by national party committees to benefit tax-exempt organizations that conduct political activities create the same potential problems of corruption that other unregulated fund-raising by the national party engenders. * * *'' Brief of Defendants, at 118, *McConnell* v. *FEC,* 251 F. Supp. 2d 176 (D.D.C. 2003); *prob. juris. noted,* 123 S.Ct. 2268 (U.S. 2003).

The Commission has determined that host committee and municipal fund disbursements related to convention activities are not ''disbursements in connection with an election'' sufficient to trigger the prohibition in 2 U.S.C. 441i(d) with respect to those host committee and municipal funds that are 501(c) organizations. Therefore, the Commission is not promulgating a new rule at 11 CFR 9008.55(d) in order to apply 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds that have 26 U.S.C. 501(c) status. Further, host committees and municipal funds therefore will not be required to make any certification pursuant to 11 CFR 300.11(d) or 300.50(d).

The Commission concluded that consistent with the longstanding rationale for not treating host committee and municipal fund activity ''in connection with'' an election for purposes of 2 U.S.C. 441b, it should similarly apply the ''in connection with'' language at 2 U.S.C. 441i(d). As noted earlier, the overriding purpose of permissible host committee and municipal fund activity is commercial or civic in nature.

Even though the restrictions of 441i(d) may not apply, national party agents will still be bound by the broad proscription at 2 U.S.C. 441i(a). This will mean that such agents may not solicit any funds not subject to the limits, prohibitions, and reporting requirements of the statute. In effect, such agents will be able to solicit funds that would be subject to the contribution limit for ''any other political committee'' (*i.e.*, $5,000 per year pursuant to 2 U.S.C. 441a(a)(1)(C), (2)(C)), but no donations from prohibited sources could be solicited, and the funds would have to be reported by the recipient host committee or municipal fund.

11 CFR 9008.55(e)—Candidate Solicitations for Host Committee and Municipal Funds

BCRA also prohibits Federal candidates and individuals holding Federal office[7] from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these prohibitions to agents acting on their behalf of either Federal candidates or individuals holding Federal office, as well as to entities directly or indirectly established, financed, maintained, or controlled by such candidates or officeholders. 2 U.S.C. 441i(e)(1).

BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4), only one of which is relevant to Presidential nominating conventions. BCRA allows Federal candidates, individuals holding Federal office, and individuals who are agents acting on behalf of either to make ''general solicitations,'' without source or amount restrictions, for a 501(c) organization, other than organizations whose ''principal purpose'' is to conduct certain Federal election activity, so long as the solicitation does not specify how the funds will or should be spent. 2 U.S.C. 441i(e)(4)(A). The ''Federal election activity'' referenced in this exception is voter registration within 120 days of a Federal election and voter identification, GOTV activities, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot. 2 U.S.C. 441i(e)(4)(A) (*citing* 2 U.S.C. 431(20)(A)(i) and (ii)).

The principal purpose of a host committee or municipal fund is to promote and generate commerce in the host city; its principal purpose is not to conduct the specified types of Federal election activity that would trigger the exception to the rule permitting general solicitations for 501(c) organizations. Therefore, under 2 U.S.C. 441i(e)(4)(A), Federal candidates and officeholders may make general solicitations of funds on behalf of any host committee or municipal fund that is a 501(c) organization where such solicitations do not specify how the funds will or should be spent and where the Federal candidates and officeholders do not establish, finance, maintain, or control these organizations.[8]

The final rule at 11 CFR 9008.55(e) is modified from the proposed rule to state that Federal candidates and officeholders and their agents may make

[7] An ''individual holding Federal office'' is defined as ''an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.'' 11 CFR 300.2(o). It does not include those ''who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.'' Non-Federal Funds Final Rules, 67 FR at 49,087. This definition is identical to the definition of ''Federal officeholder'' in 11 CFR 113.2(c).

[8] In AO 2003–12, the Commission determined that the exceptions in 2 U.S.C. 441i(e)(4) do not apply to a section 501(c) organization established, financed, maintained, or controlled by a Federal candidate or officeholder, or agent of either.

general solicitations on behalf of host committees or municipal funds that are section 501(c) organizations, provided the solicitations do not specify how the funds will or should be spent and provided that the solicitations are otherwise permitted by 2 U.S.C. 441i(e)(4)(A).[9]

Other Convention-Related Issues

A. Goods and Services Provided to Convention Committees by Commercial Vendors

The NPRM also sought comment on proposed changes to the rule on convention committees receiving goods and services from commercial vendors, 11 CFR 9008.9. Some commenters argued that nothing in BCRA should change the conclusion that the provision of these goods and services is permissible. In contrast, a different commenter argued that this exception violates both FECA and BCRA, citing many of the same reasons some commenters used to argue that the Commission's current host committee and municipal regulations are contrary to FECA and BCRA. For the same reasons stated above regarding the host committee and municipal fund exception, the Commission has determined that no change to 11 CFR 9008.9 is required by BCRA.

B. Offsets

The NPRM sought comment on whether BCRA required any reevaluation of the practice of permitting convention committees to ''offset'' in-kind contributions received from host committees that are deemed impermissible in post-convention audits. Under this practice, rather than require repayment of 100% of these receipts, the convention committee is permitted to offset the impermissible in-kind contributions with convention committee expenditures that could have been paid by the host committee. The Commission has concluded that under BCRA convention committees may continue to receive in-kind donations from host committees and municipal funds provided the in-kind donations are in accordance with 11 CFR 9008.52 and 9008.53. *See* new 11 CFR 9008.55(a). Therefore, the Commission has also determined that convention committees may offset host committee or municipal fund impermissible in-kind contributions. Accordingly, no revisions need be made in the final rules.

C. Private Hospitality Events

The NPRM also sought comment on whether BCRA requires regulation of private hospitality events held by corporations, labor organizations, and other groups in the convention city during the convention. Such events are typically held in locations outside the convention venue, but often in close proximity to it. Convention attendees including delegates, Federal candidates and officeholders, and political party officials are often invited to these events, and such individuals frequently speak or are recognized at such events.

Four commenters addressed this issue, and they all agreed that BCRA does not require regulatory language regarding these hospitality events. One of the commenters noted that these events could be subject to regulation on some other basis, if, for example, the events were also fundraisers for a political committee under the Act.

The Commission has concluded that BCRA does not change the determination that the temporal and geographic proximity of these events to Presidential nominating conventions does not subject the events to regulation under FECA solely because of that proximity. The Commission notes that FECA regulation could be triggered nonetheless by such events if, for example, a Federal political committee holds a fundraising event.

D. Host Committee Audits

The NPRM sought comment on whether the examination and audit authority set forth in current 11 CFR 9008.54 has an adequate statutory basis under FECA or the Fund Act. This section mandates audits of all host committees. The Fund Act gives the Commission the authority ''to conduct such examinations and audits (in addition to the examinations and audits required by section 9007(a)) * * * as it deems necessary to carry out the functions and duties imposed on (the Commission) by this chapter.'' 26 U.S.C. 9009(b).

When the predecessor to the current version of 11 CFR 9008.54 was promulgated in 1979, the Commission determined it was necessary to audit host committees because host committees are allowed to accept donations to defray convention expenses and, therefore, the Commission had a responsibility to insure that such donations ''were properly raised and spent.'' *Explanation and Justification for Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,* 44 FR 63036, 63038 (Nov. 1, 1979).

Two commenters argued that the Commission does not have statutory authority to conduct routine audits of host committees. In their view, the Commission's routine audit authority is limited to candidates and committees that receive public funds, and is meant to ensure that such candidates and committees do not misspend those public funds. One commenter stated that routine audits of host committees are unwarranted because host committees do not receive public funds. Both commenters favored repealing 11 CFR 9008.54.

After considering the comments, the Commission has concluded that it possesses authority to audit host committees on a routine basis. The Commission notes that the audit authority in 26 U.S.C. 9009(b) is broad. That section grants the Commission the power ''to conduct such examinations and audits'' as it deems necessary to carry out the responsibilities with which the Commission has been charged. Unlike 26 U.S.C. 9007(a), which requires the Commission to conduct routine audits of publicly-financed candidates and convention committees, section 9009(b) does not require the Commission to audit host committees. It does, however, grant the Commission the discretion to do so. Given the increasingly vital role that host committees play in financing the national nominating conventions, the Commission continues to find it necessary to conduct routine host committee audits to ensure that such entities do not provide ''anything of value'' to convention committees, except as expressly permitted in 11 CFR 9008.52(b).

E. Municipal Fund Audits

While the NPRM proposed to eliminate many of the discrepancies in the manner that the Commission's regulations applied to host committees and municipal funds, it did not propose extending the routine audit provision applicable to host committees, 11 CFR 9008.54, to municipal funds as well.

While the NPRM did not propose to conduct routine audits of municipal funds, it indicated that the Commission retains the authority to conduct a detailed and thorough review of municipal fund transactions if such an

[9] The new regulations at 11 CFR 300.52 and 300.65 could be read to restrict a broader range of general solicitations made on behalf of 501(c) organizations than does the related provision of BCRA, 2 U.S.C. 441(e)(4)(A). Specifically, the regulations appear to bar general solicitations on behalf of 501(c) organizations for *any* election activity, including certain types of Federal election activity; section 441(e)(4)(A), however, bars only those general solicitations on behalf of 501(c) organizations whose *principal purpose* is to conduct these specified types of Federal election activity. The regulations should be read as barring only those solicitations covered by the statute.

examination is necessary in particular circumstances. Comment was sought on whether, because municipal funds are already subject to government oversight, as well as for the sake of comity between Federal and State or local agencies, the Commission should decline to revise 11 CFR 9008.54 to extend its audit authority to cover municipal funds. One commenter opposed subjecting municipal funds to automatic audits.

The Commission has decided not to extend the audit authority set forth in 11 CFR 9008.54 to municipal funds because routine, full-scale audits of municipal funds are unnecessary, given that municipal funds' financial transactions are already subject to careful scrutiny by local authorities. The Commission does, however, retain the authority to conduct detailed and thorough examinations of municipal fund transactions and accounts related to the convention when warranted.

11 CFR Part 9031—Scope

11 CFR 9031.1—Scope

The Commission is making two technical amendments to this section to update the references to its other regulations.

11 CFR Part 9032—Definitions

11 CFR 9032.9—Qualified Campaign Expenses

Section 9032.9 defines qualified campaign expenses. One technical correction is being made in § 9032.9(c). Previously, this rule stated that expenditures incurred ''before the beginning of the expenditure report period'' are qualified campaign expenses if they meet the requirements of 11 CFR 9034.4(a), which addresses, *inter alia,* testing the waters expenses prior to the date an individual becomes a candidate. The reference to ''expenditure report period'' was an error because that term applies to general election candidates. *See* 11 CFR 9002.12. This reference is being changed to ''prior to the date the individual becomes a candidate,'' the same wording used in 11 CFR 9034.4(a)(2), governing testing the waters expenses. No commenters addressed this topic.

11 CFR Part 9033—Eligibility for Payments

11 CFR 9033.1—Candidate and Committee Agreements

Similar to the technical amendment to 11 CFR 9003.1(b)(8) discussed above, the Commission is revising § 9033.1. The reference to 11 CFR parts 100–116 in paragraph (b)(10) is amended to encompass all the regulations up to and including 11 CFR part 400 among the regulations with which candidates and their authorized committees agree to comply.

11 CFR 9033.11—Documentation of Disbursements

The changes to § 9033.11 follow the changes to 11 CFR 9003.5 discussed above.

11 CFR Part 9034—Entitlements

11 CFR 9034.4—Use of Contributions and Matching Payments; Examples of Qualified Campaign Expenses and Non-Qualified Campaign Expenses

Section 9034.4, which concerns the use of contributions and matching payments for qualified and non-qualified campaign expenses, is being amended in several respects. First, the heading for this section is being modified by adding the words ''examples of qualified campaign expenses and nonqualified campaign expenses'' to assist the reader in locating these examples.

11 CFR 9034.4(a)(3)(i)—Definition of ''Winding Down Costs''

The Commission is revising 11 CFR 9034.4 to move provisions from paragraph (a)(3)(i) to the new rule on winding down costs in 11 CFR 9034.11, discussed below. Revised § 9034.4(a)(3)(i) indicates that winding down costs that satisfy new 11 CFR 9034.11 are qualified campaign expenses.

11 CFR 9034.4(a)(3)(ii)—Private Contributions Received After DOI

The Commission is also revising 11 CFR 9034.4(a)(3)(ii) to clarify the rules governing ineligible primary election Presidential candidates who continue to campaign after their dates of ineligibility. Previously, paragraph (a)(3)(ii) provided that these candidates may use ''contributions received after'' the DOI to continue to campaign. However, 11 CFR 9034.5(a)(2)(i) provides that a candidate's cash on hand on the NOCO Statement should include ''all contributions dated on or before'' the DOI, whether or not submitted for matching. Thus, contributions that were dated on or before the DOI but received after the DOI were subject to both rules, and the previous rules did not make clear how they should be treated. Section 9034.4(a)(3)(ii) is being revised to eliminate the overlap by stating that only a contribution that is dated after a candidate's DOI may be used to continue to campaign.

In addition, the Commission is deleting the sentence in former § 9034.4(a)(3)(ii) that stated: ''The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility.'' In practice, each submission for matching funds is reviewed individually; thus, a candidate receives a different proportion of matching funds for each submission. Deleting this sentence makes clear that candidates will continue to receive matching funds based on the Commission's review of each matching fund submission, rather than on the proportion of matching funds the candidate received for any previous submission. Revised 11 CFR 9034.4(a)(3)(ii) also includes a new reference to 11 CFR 9034.11. No comments were received regarding these changes to § 9034.4(a)(3)(ii).

11 CFR 9034.4(a)(3)(iii)

As discussed below in the explanation and justification of 11 CFR 9035.1(c)(1), paragraph (a)(3)(iii) is being moved from § 9034.4 to § 9035.1(c)(1).

11 CFR 9034.4(a)(5)—Gifts and Bonuses

The NPRM sought comment on revising 11 CFR 9034.3(a)(5) regarding gifts and bonuses paid to campaign employees, consultants, and volunteers. For the reasons explained above in the explanation and justification for newly redesignated 11 CFR 9004.4(a)(6), the Commission has decided to make a similar change to 11 CFR 9034.4(a)(5).

11 CFR 9034.4(a)(6)—Convention Expenses of Ineligible Candidates

The NPRM proposed adding a new section 11 CFR 9034.4(a)(6) to reflect its decision in AO 2000–12 permitting certain convention expenses incurred by Presidential primary candidates after their dates of ineligibility to be considered qualified campaign expenses. In AO 2000–12, the Commission permitted ineligible candidates to treat as qualified campaign expenses certain costs related to meetings and events at the national nominating conventions subject to some restrictions. Specifically, the Commission allowed costs related to meetings and receptions to thank delegates and supporters to be treated as qualified campaign expenses, but did not also allow travel costs related to such events to be considered qualified campaign expenses. The Commission also permitted ineligible candidates to incur qualified campaign expenses related to specific fundraising events at

the national nominating conventions, as well as travel expenses to attend such events.

One commenter agreed that the expenses in AO 2000–12 should be treated as qualified campaign expenses, and suggested that the rule should be extended to cover most convention expenses of primary candidates incurred after DOI. This commenter asserted that reasonable convention expenses are in connection with a candidate's campaign for nomination both for candidates who continue to campaign past their eligibility date and those who withdraw or suspend their campaigns. Candidates who withdraw or suspend their campaigns might restart their campaigns depending on changed circumstances. The commenter suggested a ceiling of $100,000 to $250,000 for such expenses.

The Commission is adding new 11 CFR 9034.4(a)(6) to provide a simpler approach in which a candidate may treat expenses related to the national nominating convention of up to $50,000 as qualified campaign expenses. This rule recognizes that ineligible candidates have interests in participating in their parties' national nominating convention related to their candidacy for the nomination. Thus, it is reasonable to allow candidates to use public funds to participate in their party's national nominating convention. This bright line rule avoids the necessity of considering whether convention expenses are in fact necessary for fundraising activities or are genuinely to thank those who assisted the campaign as required by AO 2002–12.

The new rule in 11 CFR 9034.4(a)(6) provides that an ineligible candidate may treat up to $50,000 in expenses related to the national nominating convention as qualified campaign expenses. Any costs reasonably related to the candidate's attendance, participation or activities at the Presidential nominating convention would be a qualified campaign expense under the new rule, including travel and lodging costs of the candidate, his or her family, and campaign staff, consultants and volunteers to attend the convention, the costs of hosting receptions and events, and other convention-related costs. Any amount in excess of $50,000 will not be considered a qualified campaign expense and may be subject to repayment. The $50,000 cap is based on the Commission's experience as to how much is reasonably necessary for this purpose. Apart from the $50,000 cap, any candidate who is in a deficit position after DOI may incur additional qualified campaign expenses related to fundraising events at the national nominating conventions to retire campaign debt.

11 CFR 9034.4(b)(3)—Non-Qualified Campaign Expenses

Revisions are being made to 11 CFR 9034.4(b)(3) to more clearly state that winding down costs addressed in paragraph (a)(3) of this section are qualified campaign expenses. The revised rules also indicate that certain convention expenses permitted under paragraph (a)(6) of this section are qualified campaign expenses. As proposed in the NPRM, § 9034.4(b)(3) would have also referred to continuing to campaign costs; however, in the final rules, it does not refer to continuing to campaign costs because those costs are not qualified campaign expenses.

11 CFR 9034.10—Pre-Candidacy Payments by Multicandidate Political Committees Deemed In-kind Contributions and Qualified Campaign Expenses; Effect of Reimbursement

In the NPRM, the Commission proposed adding language at 11 CFR 9034.10 to treat certain expenses incurred by multicandidate committees as in-kind contributions benefiting publicly funded Presidential candidates. Similar language was proposed at 11 CFR 110.2(l) to reach a similar result where multicandidate committees incur such expenses benefiting Presidential candidates who are not publicly funded. These provisions were designed to address situations where unauthorized political committees closely associated with a particular individual planning to run for President defray costs that are properly treated as in-kind contributions unless reimbursed by the Presidential campaign.

Two commenters addressed this topic. One commenter generally supported the proposed rule, but noted that it did not address similar issues in Congressional campaigns. The other commenter suggested that in this context even polling that did not mention a particular Presidential candidate should be covered.

The Commission is adopting final rules that use much of the approach set forth in the proposed rules. The final rules, though, narrow their focus so they are clearer in application and better targeted to the situations that truly present the potential for evasion of the contribution and spending limits. The final rules also provide a mechanism for a Presidential campaign to achieve compliance with the law by promptly reimbursing the multicandidate committee. If there is full and timely reimbursement, the multicandidate political committee's payment is not to be treated as an in-kind contribution for either entity, but rather the reimbursement is an expenditure of the candidate's campaign and is a qualified campaign expense of the candidate's campaign (in the case of a publicly funded candidate).

One distinction built into the final rules is that they cover only payments by multicandidate political committees before the individual benefiting actually becomes a *candidate* within the meaning of 2 U.S.C. 431(2) and 26 U.S.C. 9032(2). The Commission's experience is that after an individual becomes a candidate for the Presidency by virtue of receiving more than $5,000 in contributions or making more than $5,000 in expenditures, and taking into account the ''testing the waters'' allowances at 11 CFR 100.72 and 100.131, the candidate's principal campaign committee or other authorized committee would pay the types of expenses involved here. The focus of the final rules, therefore, is those expenses paid by multicandidate political committees prior to actual candidacy under the law, *i.e.*, during the ''testing the waters'' phase and before. For other situations not addressed in new § 110.2(l) or § 9034.10, including when expenditures are paid for by multicandidate committees after candidacy, the general provisions describing in-kind contributions at 11 CFR 100.52(a) and (d), 109.20, 109.21, 109.23, and 109.37 would apply. The covered expenses in the new rules at 11 CFR 110.2(l) and 9034.10 would not trigger candidacy themselves, but would count as contributions in-kind and/or qualified campaign expenses if and when the individual benefiting becomes a candidate, including by operation of 11 CFR 100.72(b) and 100.131(b).

Both final rules narrow the types of expenses covered in the proposed rules by qualifying each. For example, only polling expenses that involve measuring the favorability, name recognition, or relative support of the person who becomes a Presidential candidate are subject to the rules. General polling solely regarding issues would not be covered. Compensation and office expenses would be covered only to the extent they relate to activities in states where Presidential primaries, caucuses, or preference polls are yet to be conducted.

Both final rules also narrow the coverage to situations where there is some involvement of the benefiting candidate. It became apparent that there may be some multicandidate political committee payments of the type described that are undertaken without

any involvement of the individual who becomes a Presidential candidate. For example, some multicandidate committees might independently undertake polling to test the relative support of various potential candidates for President in order to make decisions about which candidate to support with contributions or independent expenditures. Other committees might be setting up staffed offices in States that will be conducting Presidential primaries, but have no involvement whatsoever with a person who becomes a Presidential candidate.

The Commission decided to refer to standards already in the regulations to reach only those expenditures that properly should be treated as in-kind contributions and/or qualified campaign expenses. Thus, the final rules cover only those situations where the benefiting candidate ''accepted or received'' the goods or services, ''requested or suggested'' the goods or services, had ''material involvement'' in the decision to provide the goods or services, or was involved in ''substantial discussions'' about providing the goods or services. *See* 11 CFR 106.4(b); 109.21(b)(2), (d)(1), (d)(2), (d)(3). This approach was driven, in part, by the fact that the Commission did not in these rules want to try to differentiate between various types of multicandidate committees, such as those commonly referred to as ''leadership PACs.'' However, without some nexus with a particular benefiting candidate, the rules would reach too broadly. As a practical matter, the final rules probably will have the most impact on so called ''leadership PACs,'' but other types of multicandidate political committees will be covered as well.

If reimbursement is made by the Presidential campaign within 30 days after the benefiting candidate becomes a candidate, the multicandidate political committee's payment will not be deemed an in-kind contribution. Because some such payments may fall within the last 30 days of a multicandidate committee's and a Presidential candidate's reporting period, and before the reimbursement has been made, the question of whether to initially report the payment as a contribution in-kind arises. Because of the nature of these expenses, and the fact that treatment as an in-kind contribution does not arise unless and until the benefiting Presidential aspirant legally becomes a candidate, the Commission will not require the payment to be treated as an in-kind contribution under these circumstances. After the reimbursement opportunity has passed, though (30 days after candidacy), the payment must be treated as an in-kind contribution, and any such payments not previously reported as such would have to be so reported through the amendment process.

Please note that nothing in these final rules alters the application of 11 CFR 109.21(b)(2) or 109.37(a)(3) or (b). The Commission also notes that these final rules in no way address situations where the Commission determines that the multicandidate political committee and the candidate's principal campaign committee are affiliated under 11 CFR 100.5(g)(4).

11 CFR 9034.11—Winding Down Costs

This new section addresses winding down costs for primary election candidates. For the reasons stated in the explanation and justification for new 11 CFR 9004.11, which addresses winding down costs for general election candidates, the Commission is adopting a similar approach to winding down costs of primary candidates in new § 9034.11, with some differences described below.

11 CFR 9034.11(a)—Definition of ''Winding Down Costs''

The definition of ''winding down costs'' in new § 9034.11(a) is similar to the definition in § 9004.11(a) except that the costs are related to the candidate's campaign for nomination rather than the candidate's general election campaign. New § 9034.11(a) includes a revised version of the first sentence of previous 11 CFR 9034.4(a)(3)(i) to clarify that winding down costs are limited to costs associated with the termination of political activity related to seeking that candidate's nomination for election. This change helps to clarify that primary election campaign winding down expenses are legally distinct from general election campaign winding down expenses.

11 CFR 9034.11(b)—Winding Down Limitation

In the NPRM the Commission proposed placing a 5% amount limitation on winding down costs for primary election candidates similar to the limit proposed for general election candidates. One commenter opposed the 5% limit, noting that in the 2000 election cycle a number of candidates would have exceeded this limitation. The commenter viewed winding down costs as fixed costs. The commenter stated that media costs become an increasingly larger percentage of a campaign's expenditures as money becomes available, while the percentage of expenditures for accounting, legal services, office space and supplies diminishes because such costs are often provided at a fixed price for the anticipated duration of the service and are not directly dependent upon whether the campaign is active or closing down.

As it did with the 2000 general election candidates, the Commission compared the approximate winding down costs of the primary election candidates to the proposed winding down limitations. Ten primary candidates received matching funds in 2000. Three of these primary candidates' winding down limitations would have been calculated based on the maximum winding down limitation. Of these, only one would have exceeded the proposed winding down limitation, having spent approximately 8% of the expenditure limitation. Six primary candidates' winding down limitations would have been calculated based on their expenditures. Of these, four candidates would have exceeded the 5% winding down limitation proposed in the NPRM, with winding down costs ranging between approximately 13% and 42% of their expenditures. One candidate who would have been subject to the minimum winding down limitation of $100,000 spent substantially less than that amount. Thus, of the ten publicly funded primary committees in the 2000 Presidential elections, five committees had winding down expenses that would have exceeded the proposed limitation. One of these had sufficient funds in its related GELAC that could have paid the excessive winding down expenses. The other four committees would have received less matching funds after their DOIs.[10]

The Commission also considered the results of the hypothetical application to the 2000 candidates of a 10% winding down limitation for primary election candidates. This percentage would allow most campaigns, particularly small campaigns of unsuccessful candidates, to pay necessary winding down costs without exceeding the winding down limitation, and ensure that only campaigns with extraordinarily high winding down expenses exceed the winding down limitation. Although four of the ten 2000 election cycle primary candidates would have spent more than a 10% limitation, two of those candidates spent close to that amount (13% and 14%) and might have been able to adjust their expenditures to fall within the new

[10] Of course, this comparison is hypothetical, and the committees might have curbed certain expenses had the new rules been in effect.

limitation; only two candidates spent far in excess of a 10% limitation.

Accordingly the Commission is adopting a winding down limitation for primary election candidates in new § 9034.11(b). Specifically, the new primary election winding down limitation is (1) 10% of the overall expenditure limitation; or (2) 10% of the total of the candidate's expenditures subject to the overall expenditure limitation as of the candidate's DOI, plus the candidate's expenses exempt from the overall expenditure limitation as of DOI, such as fundraising, legal and accounting compliance expenses and other expenses. Like general election candidates, all primary candidates may spend a minimum of $100,000 on winding down costs.

This limitation only applies to the use of public funds or a mixture of public and private funds for winding down costs. The final rule allows a primary candidate who is in a deficit position at the DOI to pay for winding down costs in excess of the limitation after the committee's accounts no longer contain any matching funds. *See* 11 CFR 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI will be required to make a surplus repayment to the United States Treasury before they may use private funds for winding down costs in excess of the limitation. *See* 11 CFR 9038.3(c). The rule restricts the expenses used to calculate the winding down limitation to the period prior to a primary candidate's DOI to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

In practice, the winding down limitation for primary candidates with large campaigns would be the maximum winding down limitation: 10% of the overall expenditure limitation. Currently, the primary election expenditure limitation is equal to $36,480,000, so the 10% limit would equal $3,648,000.[11] For primary candidates with smaller campaigns, the winding down limitation would equal 10% of their expenses prior to DOI. For purposes of calculating the amount of the winding down limitation based on a primary candidate's expenses, a candidate's expenses include both disbursements and accounts payable as of the DOI for the same categories of expenses that are listed above in the discussion of the general election candidate limitation at 11 CFR 9004.11(b). In addition, taxes on non-exempt function income such as interest, dividends and sale of property are exempt from a primary candidate's overall expenditure limitation. *See* 11 CFR 9034.4(a)(4).

After a primary candidate's accounts no longer contain public funds, including after making any required surplus repayments, private funds may be used to pay for expenses in excess of the winding down limitation without resulting in non-qualified campaign expenses. In addition, as discussed above, the new rule will permit a candidate's GELAC to pay the primary committee's winding down expenses under certain conditions.

One commenter argued that the Commission has the authority to create a fund for primary candidates like the GELAC and could provide clear guidance as to the permissible expenses from the fund, which would create an incentive for candidates to adopt strong compliance procedures. The Commission disagrees. Fully funded general election candidates may not accept private contributions; thus, the GELAC allows such candidates to accept contributions, but only for limited legal and compliance costs. *See* 11 CFR 9003.3. General election candidates are also permitted some expenses that do not count toward the expenditure limitations and the GELAC is a source of funds for these exempt expenditures. Primary candidates may accept private contributions. To the extent that primary candidates are not in a surplus position and no longer retain any matching funds in their accounts, they may use private contributions for winding down expenses in excess of the new restrictions without having to make a repayment for non-qualified campaign expenses. Thus, a separate compliance fund is not necessary for primary candidates. In addition, there is no basis for permitting primary candidates to have more than one contribution limitation for the same election by allowing a separate contribution limitation for a legal defense fund or legal and accounting compliance fund.

For these reasons, the Commission does not believe that a new primary legal defense fund for enforcement matters and other legal proceedings or a primary legal and compliance fund similar to a GELAC is necessary or appropriate for primary election candidates.

11 CFR 9034.11(c)—Allocation of Primary and General Election Winding Down Costs

The rules in new 11 CFR 9034.11(c) on the allocation of primary and general election winding down costs follow the new rules in 11 CFR 9004.11(c).

11 CFR 9034.11(d)—Candidates Who Run in Both Primary and General Elections

The Commission is revising its rules to clarify which costs constitute primary winding down costs for candidates who participate in both the primary and general elections. The Commission's rules in former 11 CFR 9034.4(a)(3)(i) and (iii) allowed only candidates who do not accept public funding in the general election to begin to incur winding down costs and to treat winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. The former rule, however, did not expressly address the situation of a candidate who runs in both the primary and general elections and does not receive public funding for the general election. In the 2000 election, questions arose about how to treat administrative expenses incurred during the general election expenditure report period by a publicly funded primary election candidate who also ran in the general election but did not receive public funds for the general election.

The Commission believes that candidates who are actively campaigning in the general election should not be considered to be terminating political activity and winding down their primary campaigns. Candidates who run in the general election, whether or not they receive public funds for that election, must wait until 31 days after the general election, which is the first day after the end of the expenditure report period for publicly financed general election candidates, before they may begin to incur and pay winding down expenses or allocate them as 100% compliance expenses. Consequently, the new rule at 11 CFR 9034.11(d) expressly applies without regard to whether candidates' general election campaigns are publicly funded. Expenses incurred during the expenditure report period for publicly funded general election candidates or the equivalent time period ending 30 days after the general election for other general election candidates, are general election expenses, rather than primary winding down costs. This rule prevents the use of primary matching funds for non-qualified expenses related to the

[11] Before the 2004 primary elections, the primary election expenditure limit under 2 U.S.C. 441a(b)(1)(A) is subject to an additional annual adjustment under 2 U.S.C. 441a(c).

general election. *See* 11 CFR 9032.9(a) and 9034.4(b). Although this revised rule may result in general election campaigns incurring a small amount of administrative costs related to terminating the primary campaign during the general election period, in practice, these expenses are offset by general election start up costs that are incurred and paid by the primary committee prior to the candidate's DOI. This approach is also consistent with the Commission's bright line rules for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e), which allow some primary related expenses to be paid by the general election committee and *vice versa.*

One commenter believed that this approach addresses the danger of primary funds paying for general election activity but fails to address the situation where a candidate only receives public funds in the general election and could use primary campaign funds to defray general election expenses. The Commission does not agree that this is a problem because a candidate is not permitted to supplement the general election grant by paying general election expenses with primary funds.

New paragraph 11 CFR 9034.11(d) is based on former 11 CFR 9034.4(a)(3)(i) with certain revisions. The new rule at 11 CFR 9034.11(d) states that a candidate who runs in the general election must wait until the day following the date 30 days after the general election before using matching funds for primary winding down costs, regardless of whether the candidate receives public funds for the general election. This rule also clarifies that no expenses incurred prior to 31 days after the general election by candidates who run in the general election may be considered primary winding down costs or paid with matching funds. Other portions of former § 9034.4(a)(3)(i) are discussed below in the explanation and justification for 11 CFR 9035.1(c)(i).

11 CFR Part 9035—Expenditure Limitations

11 CFR 9035.1—Campaign Expenditure Limitation; Compliance and Fundraising Exemptions

Section 9035.1(a)(1) of the Commission's regulations implements the spending limit for primary election candidates and their authorized committees in 2 U.S.C. 441a(b)(1)(A). Section 9035.1(a)(2) prescribes how the amounts of expenditures attributed to the spending limits will be calculated. The NPRM proposed to clarify 11 CFR 9035.1(a) to provide guidance on the extent to which coordinated expenditures, coordinated communications, coordinated party expenditures, party coordinated communications and other in-kind contributions will count against the spending limits in § 9035.1(a)(1). The Commission has decided to adopt the proposed additions to the rules at 11 CFR 9035.1.

The Commission has generally treated the receipt of in-kind contributions by Presidential primary candidates as expenditures made by those candidates subject to the expenditure limitations and has included such in-kind contributions in the total amount of a candidate's expenditures subject to the limits in calculating repayments based on excessive expenditures. In one repayment determination arising from an audit of a 1988 candidate, the Commission concluded that in-kind contributions for testing-the-waters expenses from a multicandidate political committee associated with that candidate, which was considered his ''leadership PAC,'' were subject to the candidate's state-by-state spending limits. The Commission considered in-kind contributions to be part of the mixed pool of public and private funds, and thus, these expenditures were included in calculating the amount in excess of the limitations subject to repayment. The final rules amend 11 CFR 9035.1(a) and 9038.2(b)(2) (discussed below) to reflect this approach.

In the BCRA rulemaking on coordinated and independent expenditures, the Commission defined the terms ''coordinated,'' ''coordinated communication,'' and ''party coordinated communications'' in 11 CFR 109.20, 109.21, and 109.37, respectively. *See Explanation and Justification for Final Rules on Coordinated and Independent Expenditures,* 68 FR 421 (Jan. 3, 2003). These rules also describe circumstances in which coordinated expenditures and coordinated communications are treated as in-kind contributions.

Under 11 CFR 109.21(b)(2) and 11 CFR 109.37(a)(3), some coordinated expenditures are made by a person or party committee, but are not received or accepted by a candidate. Specifically, expenditures that meet the conduct standards for a common vendor at 11 CFR 109.21(d)(4) or a former employee or independent contractor at 11 CFR 109.21(d)(5) are not treated as received or accepted by a candidate, unless the candidate, authorized committee, or their agent engages in the conduct described in 11 CFR 109.21(d)(1) (request or suggestion), 11 CFR 109.21(d)(2) (material involvement), or 11 CFR 109.21(d)(3) (substantial discussion). Thus, only certain, specific actions taken by the candidate or the candidate's authorized committee or agents, as set forth in 11 CFR 109.21 and 11 CFR 109.37, result in the receipt or acceptance of an in-kind contribution arising from a coordinated communication or a party coordinated communication. Only in-kind contributions received or accepted by the candidate or authorized committee or agent are treated as expenditures made by the candidate. *See* 11 CFR 109.20(b) (requiring a candidate to report coordinated expenditures as expenditures); 11 CFR 109.21(b)(1) (requiring a candidate to report received or accepted coordinated communications as expenditures); 11 CFR 109.37(a)(3) (stating that candidates are not required to report as expenditures party coordinated communications that do not constitute received or accepted in-kind contributions).

The final rules add new paragraph (a)(3) to § 9035.1 to specify that coordinated expenditures pursuant to 11 CFR 109.20, coordinated communications pursuant to section 109.21, coordinated party expenditures, party coordinated communications pursuant to section 109.37, and in-kind contributions count against the expenditure limitations and are included in the total amount of a publicly funded candidate's expenditures subject to the limits. New 11 CFR 9035.1(a)(3) states that the Commission will attribute to a candidate's overall and state-by-state expenditure limitations the total of all: (1) Coordinated expenditures under 11 CFR 109.20; (2) coordinated communications under 11 CFR 109.21 that are in-kind contributions received or accepted by the candidate, authorized committee or agent; (3) coordinated party expenditures, including party coordinated communications under 11 CFR 109.37 that are in-kind contributions received or accepted by the candidate, authorized committee or agent and that exceed the coordinated party expenditure limitation at 11 CFR 109.32(a); and (4) other in-kind contributions received or accepted by the candidate, authorized committee or agent. This new paragraph is consistent with the Commission's general past practice in audits of treating in-kind contributions as expenditures by the recipient Presidential candidates and their authorized committees.

The phrase ''receive or accept'' in 11 CFR 9035.1 is consistent with the

terminology used in 11 CFR 109.21(b)(2), 11 CFR 109.23(a) and 11 CFR 109.37(a)(3) to ensure that any coordinated expenditures that are not ''received or accepted'' by a candidate do not count against that candidate's expenditure limitations. One commenter stated that limiting the rule to in-kind contributions that the candidate has received or accepted under 11 CFR part 109 is a common sense extension of the existing rules, which provide that a person may make an excessive in-kind contribution but the intended beneficiary will not violate the law unless the candidate or committee accepts or receives the contribution. This commenter stated that it is appropriate to apply the legal principle that liability is the consequence of one's own acts and not the acts of others to regulations governing whether a candidate has made expenditures in excess of the limitations. The Commission is limiting the new rule to in-kind contributions received or accepted by the candidate, authorized committee or agents to be consistent with the rules in 11 CFR part 109.

Additionally, new paragraph (a)(4) provides that the value of an in-kind contribution is the usual and normal charge for the goods and services provided.

The revised rule in 11 CFR 9035.1 does not specifically list the dissemination, distribution or republication of campaign material prepared by a candidate, which is governed by 11 CFR 109.23. Section 109.23(a) provides that the candidate who prepared the campaign materials does not receive or accept an in-kind contribution, and need not report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37. Thus, the cost of such campaign materials would not count against the candidate's expenditure limitations unless the candidate receives or accepts them as in-kind contributions in the form of coordinated communications or party coordinated communications, as provided in 11 CFR 109.21 and 11 CFR 109.37, respectively. Because the revised rule at 11 CFR 9035.1(a)(3) specifically includes coordinated communications and party coordinated communications that are received or accepted, a reference to the republication of campaign materials is unnecessary.

The Commission also notes that 11 CFR 109.32(a)(4) provides that any coordinated party expenditures made under § 109.32(a), which specifies the limitations for coordinated party expenditures in Presidential elections, do not count against the candidate's expenditure limitations. However, any party coordinated expenditures exceeding the 2 U.S.C. 441a(d)(2) party expenditure limitations would count against the candidate's expenditure limitations. Thus, the new rule in 11 CFR 9035.1(a)(3) does not adversely affect coordinated party expenditures because § 9035.1(a)(3) applies only to amounts in excess of the statutory limitations in 2 U.S.C. 441a(d)(2).

Although coordinated party expenditures are made in connection with the general election campaign of a Presidential candidate, they may be made prior to the date of the candidate's nomination, pursuant to 11 CFR 109.34. Any coordinated party expenditures that are in excess of the coordinated party expenditure limitation at 11 CFR 109.32(a) may be attributable to a Presidential primary candidate's expenditure limitations based on the ''bright line'' rules at 11 CFR 9034.4(e) for attributing expenditures between the primary and general election spending limitations.

11 CFR 9035.1(c)(1)—Compliance Exemption

Section 11 CFR 9035.1(c)(1) addresses the legal and accounting compliance exemption to the expenditure limitations. For greater clarity, the Commission is revising the rule to include a revised version of former 11 CFR 9034.4(a)(3)(iii), related to the treatment of certain winding down expenses as 100% compliance costs. The revised regulation provides that only candidates who do not run in the general election may treat 100% of salary, overhead and computer expenses as exempt compliance expenses immediately after their date of ineligibility. Candidates who run in the general election must wait until 31 days after the general election to treat these expenses as exempt compliance costs. For further discussion of the treatment of winding down costs for candidates who run in both the primary and general elections, see the explanation and justification for 11 CFR 9034.11(d) above.

11 CFR 9035.1(c)(3)—Shortfall Bridge Loan Exemption

During recent election cycles, the Presidential Primary Matching Payment Account has occasionally contained insufficient funds to fully pay all of the matching funds to which primary candidates were entitled on the dates payments were due. *See generally* 26 U.S.C. 9037(b); 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The delay or deficiency in matching fund payments has resulted in inconvenience and additional costs for candidates, such as additional costs for ''bridge loans'' to pay for their expenses until they received their full entitlement of matching funds several months later. Such expenses currently count against a candidate's overall expenditure limitation, reducing the amount the candidate may spend on other campaign activities.

To mitigate the effect of a potential shortfall on candidates, the Commission is creating a new ''shortfall bridge loan exemption'' from a primary candidate's overall expenditure limitation at new 11 CFR 9035.1(c)(3). The NPRM proposed a flat exemption of 5% of the amount of all delayed or deficient payments of matching funds to which the candidate is entitled. One commenter supported this concept but noted the difficulty in choosing a fair formula that would not favor candidates whose payments are delayed over those who are less dependent on public funds. The commenter argued that a candidate's expenditure limitation should not be raised significantly over that applicable to other candidates unless the amount accurately reflects costs actually incurred by the candidate.

Rather than the flat percentage proposed in the NPRM, the Commission has decided to base the new exemption on the amount of interest charges accrued during a shortfall period on all bridge loans obtained by a candidate if the candidate experiences any delay or deficiency in matching fund payments due to a shortfall. Under new 11 CFR 9035.1(c)(3), only loans secured or guaranteed by matching funds will be eligible for this exemption. The interest charges that are exempt from the expenditure limit are those that accrued during a shortfall period, which the new rule defines as beginning when the shortfall first impacts the candidate—the first payment date on which the candidate does not receive the entire amount of matching funds certified by the Commission. The shortfall period ends on the date the candidate receives the last of the matching funds to which the candidate is entitled or becomes ineligible to receive them because the Commission revises the amount it previously certified.

If a candidate experiences a delay or deficiency in matching fund payments, the candidate need not demonstrate that any bridge loan was necessitated by the deficiency in matching fund payments to claim this exemption. In practice, it is difficult to distinguish between the

costs of bridge loans that are a direct result of a shortfall in matching funds and other loan expenses because a shortfall in public funds may be only one of several reasons a candidate needs to obtain a bridge loan. The new rule also requires that the candidate must provide documentation demonstrating the amount of interest charged on all loans guaranteed or secured by matching funds.

Finally, the Commission is not creating a similar exemption for general election candidates because payments of public funds to general election candidates and conventions receive priority over matching funds payments. While there has been a shortfall in matching fund payments in previous election cycles, there has never been a shortfall in payments to general election candidates.

11 CFR Part 9036—Review of Matching Fund Submissions and Certification of Payments by Commission

11 CFR 9036.1—Matching Fund Submission

In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized committees to aggregate, itemize, and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. *See Explanation and Justification for the Rules Governing Election Cycle Reporting by Authorized Committees,* 65 FR 42619 (July 11, 2000). The new rules, which reflect a 1999 amendment to 2 U.S.C. 434(b), apply to reporting periods beginning on or after January 1, 2001. *See* Pub. L. 106–58, section 641, 113 Stat. 430, 477 (1999); *Announcement of Effective Date for the Rules Governing Election Cycle Reporting by Authorized Committees,* 65 FR 70644 (Nov. 27, 2000). Under 11 CFR 100.3(b), an election cycle begins on the first day after the date of the previous general election for the office the candidate seeks or on the date an individual becomes a candidate and ends on the date of the next general election for that office. The election cycle is thus four years or less for Presidential candidates.

The Commission's rules regarding threshold submissions for matching funds in 11 CFR 9036.1(b)(1)(ii) previously required candidates to submit a contributor list including occupation and name of employer information for contributions from individuals aggregating in excess of $200 per calendar year. Section 9036.1(b)(1)(ii) is being revised to specify that the matching fund submission and recordkeeping requirements include occupation and employer information for those individuals who contribute more than $200 in an election cycle, rather than in a calendar year, to reflect the statutory change. One commenter noted that these changes are not controversial and aim to reconcile the statute and regulations.

11 CFR 9036.2—Additional Submissions for Matching Fund Payments

The changes to the rules on additional submissions for matching funds at 11 CFR 9036.2(b)(1)(v) follow the changes made to 11 CFR 9036.1 regarding threshold submissions.

11 CFR Part 9038—Examination and Audits

11 CFR 9038.2(b)(4)—Technical Correction

Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income derived from an investment or other use of surplus public funds after a candidate's DOI, less Federal, State and local taxes paid on that income, shall be paid to the Federal Treasury. However, the word ''taxes'' was inadvertently dropped from that paragraph in the previous regulations. This word is being restored in the final rule.

Other Candidate Issues

A. Candidate Salary

The Commission recently revised its rules governing personal use of campaign funds at 11 CFR part 113 to implement BCRA's changes to 2 U.S.C. 439a. In that rulemaking, the Commission decided to allow certain campaign funds to be used for candidate salaries, including privately funded Presidential candidates, under certain conditions delineated at 11 CFR 113.1(g)(1)(i)(I). *See Explanation and Justification for the Rules Governing Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds,* 67 FR 76962, 76971–73 (Dec. 13, 2002). The Explanation and Justification for 11 CFR 113.1(g) indicated that a salary payment to a candidate from campaign funds is personal use if the salary payment is ''in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency.'' 67 FR at 76972. The Commission noted that a candidate's salary does not constitute a qualified campaign expense under 11 CFR 9002.11 and 9032.9. *Id.*

Sections 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a publicly funded candidate by the candidate's general election or primary campaign committee, other than to reimburse funds advanced by the candidate, are non-qualified campaign expenses. In promulgating these rules in 1987, the Commission explained that ''no payments may be made to the candidate from accounts containing public funds'' except for reimbursements, and candidates ''may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning.'' *See Explanation and Justification for the Rules on Public Financing of Presidential Primary and General Election Candidates,* 52 FR 20864, 20866 and 20870 (June 3, 1987).

The NPRM for these Final Rules indicated that the Commission was considering whether to revise 11 CFR 9004.4 and 9034.4 to allow publicly funded primary and general election Presidential candidates to receive salaries paid, in whole or part, with Federal funds, and to treat salary payments to candidates as qualified campaign expenses under similar conditions as those for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I).

There was no consensus among the commenters on this issue. One commenter cautioned that this is a policy issue best left to Congress, and it could have an adverse effect on the public financing system by depressing public participation in the tax check-off system. In addition, this commenter observed that it may not be logical to allow public funds to be used to pay for candidate salary but not for household expenses, mortgages and tuition for the candidate's family. Conversely, other commenters agreed with the proposal, noting that currently, incumbent Members of Congress, Presidents and Vice Presidents maintain their salaries while they are Presidential candidates, but some challengers might be unable to do so. Some commenters believed the proposal had sufficient safeguards and disclosure to prevent Presidential candidates from receiving a windfall from a campaign, while others saw a potential for abuse.

The Commission has decided to maintain its longstanding rule that payments out of public funds to a Presidential candidate, except for campaign expense reimbursements, are not qualified campaign expenses. Because public funds are involved, the Commission believes that this issue is a policy question that is best addressed by Congress. Therefore, the rules in 11 CFR 9004.4(b) and 9034.4(b) will continue to treat salaries paid out of public funds to

publicly funded candidates as non-qualified campaign expenses.

B. Media Travel Expenses

The Commission's rules at 11 CFR 9004.6 and 9034.6 establish procedures for authorized committees of Presidential primary and general election candidates to obtain reimbursement for transportation and other services that are provided to the news media and the Secret Service over the course of a campaign. These rules contain a non-exhaustive list of such services. Sections 9004.6(a)(3) and 9034.6(a)(3) state that Presidential campaign committees may seek reimbursement from the news media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the (White House Travel Office, in conjunction with the White House Correspondents' Association (''*White House Travel Manual''*). Expenses for which a publicly-funded committee receives no reimbursement are considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, are subject to the overall expenditure limitation under 11 CFR 9004.6(a)(2) and 9034.6(a)(2).

In the 1996 campaign, some Presidential campaign committees incurred significant expenses to reconfigure campaign aircraft. The expenses included both interior work, such as equipment installation, and exterior work such as campaign logos. However, these expenses were not included in the *White House Travel Manual* for 1996, which has not changed to date. The NPRM in this rulemaking sought comment on whether the Commission should revise the rules to permit Presidential campaign committees to obtain reimbursement for aircraft reconfiguration expenses from the news media.

One joint comment submitted by 23 news organizations supported continued use of the *White House Travel Manual.* It also argued that most previous aircraft reconfigurations have been minor and for the convenience for the campaign, so that any cost sharing should be negotiated by the campaign and the press organizations. Another commenter stated that the *White House Travel Manual* does not address aircraft reconfiguration because the needs of the press have been taken into consideration when government aircraft are originally designed or reconfigured, but candidates who do not travel on government aircraft should be able to make the necessary changes to an aircraft and seek press reimbursement. This commenter stated that the use of the *White House Travel Manual* to determine reimbursable expenses is generally a wise policy, but advocated a mechanism for candidates to seek exceptions to the general rule if the candidate can demonstrate that an expense was incurred at the request of and to accommodate the press.

The Commission has determined that the aircraft reconfiguration expenses are not suitable for a rule of general applicability particularly because any reconfiguration will likely involve an airplane to be used by many members of the press on many different flights over the life of the campaign. Accordingly, it would be quite difficult to determine the appropriate amount of any monetary payment at a point when neither the press corps nor the campaign staff can predict the number of flights or their costs. The advisory opinion process, however, might serve as the appropriate means for the Commission to consider any particular arrangement for the sharing of these one-time expenses. Consequently, 11 CFR 9004.6 and 9034.6 are not being revised.

C. In-Kind Contributions and Repayments

The NPRM proposed amending 11 CFR 9038.2(b)(2)(ii)(A), which concerns repayments based on expenditures in excess of a Presidential primary candidate's expenditure limitations. Section 9038.2(b) would have provided that in-kind contributions, coordinated expenditures, coordinated communications, coordinated party expenditures and party coordinated communications that count against a candidate's expenditure limitations must be included in the total amount of expenditures for purposes of calculating repayment determinations for expenditures in excess of the limitations.

One commenter urged the Commission to state whether it will seek repayment for primary expenditures in excess of the expenditure limitations.

On a related issue, the NPRM also proposed revisions to 11 CFR 9038.2(b)(2)(iii) that would have included both total deposits and in-kind contributions received or accepted by the candidate in the calculation of the repayment ratio for non-qualified campaign expenses. One commenter stated that this change is consistent with the statute and regulations and that the change would reduce repayment amounts.

The Commission has decided to make no changes to the regulation at 11 CFR 9038.2(b)(2), which currently requires publicly funded Presidential primary campaigns to make repayments on the basis of exceeding the Congressionally-mandated spending limits. The current rule is not being changed at this time because there is no consensus in favor of changing the regulation. *See also Notice of Disposition for the Rules Governing Public Funding of Presidential Primary Candidates—Repayments,* 65 FR 15273 (Mar. 22, 2000).

Regulatory Flexibility Act—Certification of No Effect Pursuant to 5 U.S.C. 605(b)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few small entities will be affected by these rules, which apply only to Presidential candidates, their campaign committees, national party committees, host committees, and municipal funds. Most of these are not small entities. Most of the Presidential campaigns and convention committees receive full or partial funding from the Federal Government, and are subsequently audited by the Commission. The Commission amends these rules every four years to reflect its experience in the previous Presidential campaign. These rules propose no sweeping changes, and are largely intended to simplify this process. Many expand committee options; several are technical; and others codify past Commission practice. Those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 107

Campaign funds, Political Committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 9001

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9031

Campaign funds.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033—9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

■ For the reasons set out in the preamble, subchapters A, E and F of Chapter I of Title 11 of the Code of Federal Regulations are amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

■ 2. Section 104.5 is amended by:

■ a. Revising paragraph (b)(1)(i)(C);

■ b. Revising paragraph (b)(1)(ii); and

■ c. Revising paragraph (b)(2).

■ Revisions read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at paragraph (a)(2)(i) of this section, a post-general election report shall be filed as prescribed at paragraph (a)(2)(ii) of this section, and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving and has not received contributions aggregating $100,000 and does not anticipate making and has not made expenditures aggregating $100,000, the committee shall file a preelection report or reports, a post general election report, and quarterly reports, as prescribed in paragraphs (a)(1) and (2) of this section.

* * * * *

(2) *Non-election year reports.* During a non-election year, the treasurer shall file either monthly reports as prescribed by paragraph (b)(1)(i) of this section or quarterly reports as prescribed by paragraph (a)(1) of this section. A principal campaign committee of a Presidential candidate may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its pre-existing filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

* * * * *

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

■ 3. The authority citation for part 107 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8).

■ 4. Section 107.2 is revised to read as follows:

§ 107.2 Registration and reports by host committees and municipal funds.

Each host committee and municipal fund shall register and report in accordance with 11 CFR 9008.51. The reports shall contain the information specified in 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 5. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

■ 6. Section 110.2 is amended by adding new paragraph (l) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(l) *Pre-candidacy expenditures by multicandidate political committees deemed in-kind contributions; effect of reimbursement.* (1) A payment by a multicandidate political committee is deemed an in-kind contribution to and an expenditure by a Presidential candidate, even though made before the individual becomes a candidate under 11 CFR 100.3, if—

(i) The expenditure is made on or after January 1 of the year immediately following the last Presidential election year;

(ii) With respect to the goods or services involved, the candidate accepted or received them, requested or suggested their provision, was materially involved in the decision to provide them, or was involved in substantial discussions about their provision; and

(iii) The goods or services are—

(A) Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;

(B) Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate's home state and in or near the District of Columbia;

(C) Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate's home state and in or near the District of Columbia; or

(D) Expenses of individuals seeking to become delegates in the Presidential nomination process.

(2) Notwithstanding paragraph (l)(1) of this section, if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure of the candidate.

PART 9001—SCOPE

■ 7. The authority citation for part 9001 continues to read as follows:

Authority: 26 U.S.C. 9009(b).

■ 8. Section 9001.1 is amended by removing the number ''116'' and adding in its place the number ''400'' in both instances in which ''116'' appears.

PART 9003—ELIGIBILITY FOR PAYMENTS

■ 9. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

■ 10. In § 9003.1, paragraph (b)(8) is amended by removing the number ''116'' and adding in its place the number ''400''.

■ 11. Section 9003.3 is amended by:

■ a. Revising the introductory text of paragraph (a)(1)(i);
■ b. Revising paragraph (a)(1)(i)(A);
■ c. Revising paragraph (a)(1)(ii)(A)(3);
■ d. Revising paragraph (a)(1)(ii)(A)(4);
■ e. Revising the introductory text of paragraph (a)(1)(iv);
■ f. Revising paragraph (a)(1)(iv)(C);
■ g. Revising paragraph (a)(1)(v);
■ h. Revising paragraph (a)(2)(i)(D);
■ i. Revising paragraph (a)(2)(i)(G);
■ j. Revising paragraph (a)(2)(i)(H);
■ k. Adding new paragraph (a)(2)(i)(I);
■ l. Revising paragraph (a)(2)(iii); and
■ m. Revising paragraph (a)(2)(iv).

Revisions and additions read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) * * *

(1) * * *

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund (''GELAC'') may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before April 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable. Contributions shall not be solicited for the GELAC before April 1 of the calendar year in which a Presidential general election is held. If the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, shall be refunded within sixty (60) days after the candidate's date of ineligibility.

* * * * *

(ii) * * *

(A) * * *

(*3*) The written redesignations are received within 60 days of the Treasurer's receipt of the contributions; and

(*4*) The requirements of 11 CFR 110.1(b)(5)(i) and (ii)(A) and 110.1(l) regarding redesignation are satisfied.

* * * * *

(iv) Contributions that are made after the beginning of the expenditure report period but that are not designated in writing for the GELAC are considered made with respect to the primary election and may be redesignated for the GELAC and transferred to the GELAC only if—

* * * * *

(C) The candidate obtains the contributor's written redesignation in accordance with 11 CFR 110.1.

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the GELAC and transferred to the GELAC if the candidate redesignates the contribution for the GELAC in accordance with 11 CFR 110.1(b)(5)(i) and (ii)(A) or (ii)(B). For purposes of this section only, 11 CFR 110.1(b)(5)(ii)(B)(*1*) shall not apply.

* * * * *

(2) * * *

(i) * * *

(D) To make repayments under 11 CFR 9007.2, 9038.2, or 9038.3;

* * * * *

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of Federal funds, provided that the amounts so loaned are restored to the GELAC;

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6; and

(I) To defray winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the candidate's primary election committee, general election committee, or both committees. For purposes of this section, 100% of salary, overhead and computer expenses incurred after the end of the expenditure report period shall be considered winding down expenses for legal and accounting compliance activities payable from GELAC funds, and will be presumed to be solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

* * * * *

(iii) Amounts paid from the GELAC for the purposes permitted by paragraphs (a)(2)(i) (A) through (F), (H) and (I) of this section shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (*See also* 11 CFR 100.146.) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to and funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, after payment of all expenses set out in paragraph (a)(2)(i) of this section, and the completion of the audit and repayment process, including the making of all repayments owed to the United States Treasury by both the candidate's primary and general election committees, funds remaining in the GELAC may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts, which shall remain subject to the primary expenditure limit under 11 CFR 9035.1.

* * * * *

■ 12. Section 9003.5 is amended by adding new paragraph (b)(4) to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 13. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

■ 14. Section 9004.4 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a)(3);
■ c. Revising paragraph (a)(4), introductory text;
■ d. Removing paragraph (a)(4)(i);
■ e. Redesignating paragraph (a)(5) as paragraph (a)(6), redesignating paragraph (a)(4)(ii) as paragraph (a)(5) and revising newly designated (a)(5) and revising newly designated (a)(6); and
■ f. Revising paragraph (b)(3).

Revisions read as follows:

§ 9004.4 Use of payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) To restore funds expended in accordance with 11 CFR 9003.4 for

qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period;

(4) To defray winding down costs pursuant to 11 CFR 9004.11;

(5) To defray costs associated with the candidate's general election campaign paid after the end of the expenditure report period, but incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period for goods and services received during the expenditure reporting period; and

(6) Monetary bonuses paid after the date of the election and gifts shall be considered qualified campaign expenses, provided that:

(i) All monetary bonuses paid after the date of the election for committee employees and consultants in recognition of campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of the election; and

(B) Are paid during the expenditure report period; and

(ii) Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000.

(b) * * *

(3) *Expenditures incurred after the close of the expenditure report period.* Except for accounts payable pursuant to paragraph (a)(5) of this section and winding down costs pursuant to 11 CFR 9004.11, any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses.

* * * * *

■ 15. New section 9004.11 is added to read as follows:

§ 9004.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Federal Election Campaign Act and the Presidential Election Campaign Fund Act, and other necessary administrative costs associated with ending the campaign, including office space rental, staff salaries, and office supplies. Winding down costs are qualified campaign expenses.

(b) *Winding down limitation.* The total amount of winding down costs that may be paid for with public funds shall not exceed the lesser of:

(1) 2.5% of the expenditure limitation pursuant to 11 CFR 110.8(a)(2); or

(2) 2.5% of the total of:

(i) The candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus

(ii) The candidate's expenses exempt from the expenditure limitation as of the end of the expenditure report period; except that

(iii) The winding down limitation shall be no less than $100,000.

(c) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any reasonable allocation method. An allocation method is reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than one third of total winding down costs allocated to each committee. A candidate may demonstrate that an allocation method is reasonable even if either the primary or the general election committee is allocated less than one third of total winding down costs.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

■ 16. The authority citation for part 9008 is revised to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8), 441i; 26 U.S.C. 9008, 9009(b).

■ 17. Section 9008.3 is amended by redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(iii) and adding new paragraph (b)(1)(ii) to read as follows:

§ 9008.3 Eligibility for payments; registration and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Each convention committee established by a national committee under paragraph (a)(2) of this section shall submit to the Commission a copy of any and all written contracts or agreements that the convention committee has entered into with the city, county, or State hosting the convention, a host committee, or a municipal fund, including subsequent written modifications to previous contracts or agreements. Each such contract, agreement or modification shall be filed with the report covering the reporting period in which the contract or agreement or modification is executed.

* * * * *

■ 18. Section 9008.7 is amended by revising paragraph (a)(4)(xii) to read as follows:

§ 9008.7 Use of funds.

(a) * * *

(4) * * *

(xii) Expenses for monetary bonuses paid after the last date of the convention or gifts for national committee or convention committee employees, consultants, volunteers and convention officials in recognition of convention-related activities or services, provided that:

(A) Gifts for committee employees, consultants, volunteers and convention officials in recognition of convention-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000; and

(B) All monetary bonuses paid after the last date of the convention for committee employees and consultants in recognition of convention-related activities or services are provided for pursuant to a written contract made prior to the date of the convention and are paid no later than 30 days after the convention; and

* * * * *

■ 19. Section 9008.8 is amended by revising paragraph (b)(2) and paragraph (b)(4)(ii)(B) to read as follows:

§ 9008.8 Limitation of expenditures.

* * * * *

(b) * * *

(2) *Expenditures by government agencies and municipal funds.* Expenditures made by government agencies and municipal funds shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

* * * * *

(4) * * *

(ii) * * *

(B) The contributions raised to pay for the legal and accounting services comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. These contributions, when aggregated with other contributions from the same contributor to the political committees established and maintained by the national political party, shall not exceed the amounts permitted under 11 CFR 110.1(c) and 110.2(c), as applicable.

* * * * *

■ 20. Section 9008.10 is amended by revising the introductory text to read as follows:

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

In addition to the requirements set forth at 11 CFR 102.9(b), the convention committee must include as part of the evidence of convention expenses the following documentation:

* * * * *

■ 21. Section 9008.12 is amended by revising paragraph (b)(7) to read as follows:

§ 9008.12 Repayments.

* * * * *

(b) * * *

(7) The Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a convention expenditure by the host committee, government agency or municipal fund that is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of a contribution by the host committee or government agency or municipal fund from an impermissible source.

* * * * *

■ 22. The heading of subpart B of part 9008 is revised to read as follows:

Subpart B—Host Committees and Municipal Funds Representing a Convention City

■ 23. Section 9008.50 is revised to read as follows:

§ 9008.50 Scope and definitions.

(a) *Scope.* This subpart B governs registration and reporting by host committees and municipal funds representing convention cities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees and municipal funds. In addition, subpart B describes permissible disbursements by host committees and municipal funds to defray convention expenses and to promote the convention city and its commerce.

(b) *Definition of host committee.* A *host committee* is any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau, that satisfies all of the following conditions:

(1) It is not organized for profit;

(2) Its net earnings do not inure to the benefit of any private shareholder or individual; and

(3) Its principal purpose is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.

(c) *Definition of municipal fund.* A *municipal fund* is any fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to the control of officials of the State or local government.

■ 24. Section 9008.51 is amended by:
■ a. Revising the paragraph heading for paragraph (a);
■ b. Revising paragraph (a)(1);
■ c. Adding paragraph (a)(3);
■ d. Revising paragraph (b); and
■ e. Revising paragraph (c).

The revisions and additions read as follows:

§ 9008.51 Registration and reports.

(a) *Registration by host committees and municipal funds.*

(1) Each host committee and municipal fund shall register with the Commission by filing a *Statement of Organization* on FEC Form 1 within 10 days of the date on which such party chooses the convention city, or within 10 days after the formation of the host committee or municipal fund, whichever is later. In addition to the information already required to be provided on FEC Form 1, the following information shall be disclosed by the registering entity on FEC Form 1: The name and address; the name and address of its officers; and a list of the activities that the registering entity plans to undertake in connection with the convention.

* * * * *

(3) Each host committee and municipal fund required to register with the Commission under paragraph (a) of this section, shall submit to the Commission a copy of any and all written contracts or agreements that it has entered into with the city, county, or State hosting the convention, a host committee, a municipal fund, or a convention committee, including subsequent written modifications to previous contracts or agreements, unless such contracts, agreements or modifications have already been submitted to the Commission by the convention committee. Each such contract or agreement or modification shall be filed with the first report due under paragraph (b) of this section after the contract or agreement or modification is executed.

(b) *Post-convention and quarterly reports by host committees and municipal funds; content and time of filing.*

(1) Each host committee or municipal fund required to register with the Commission pursuant to paragraph (a) of this section shall file a post convention report on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall be complete as of 15 days prior to the date on which the report must be filed and shall disclose all the information required by 11 CFR part 104 with respect to all activities related to a presidential nominating convention.

(2) If such host committee or municipal fund has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 15 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee or municipal fund ceases all activity that must be reported under this section.

(3) Such host committee or municipal fund shall file a final report with the Commission not later than 10 days after it ceases activity that must be reported under this section, unless such status is reflected in either the post-convention report or a quarterly report.

(c) *Post-convention statements by State and local government agencies.* Each government agency of a State, municipality, or other political subdivision that provides facilities or services related to a Presidential nominating convention shall file, by letter, a statement with the Commission reporting the total amount spent to provide facilities and services for the convention under 11 CFR 9008.52(b), a list of the categories of facilities and services the government agency provided for the convention, the total amount spent for each category of facilities and services provided, and the total amount defrayed from general revenues. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations. This paragraph (c) does not apply to any activities of a State or local government agency through a municipal fund that are reported pursuant to paragraph (b) of this section.

■ 25. Section 9008.52 is revised to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

(a) *Receipt of goods or services from commercial vendors.* Host committees may accept goods or services from commercial vendors under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

(b) *Receipt of donations from businesses, organizations, and individuals.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a host committee to be used for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

(2) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(3) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.9(c);

(4) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance;

(5) To provide the national committee use of an auditorium or convention center and to provide construction and convention related services for that location such as: construction of podiums; press tables; false floors; camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(6) To defray the costs of various local transportation services, including the provision of buses and automobiles;

(7) To defray the costs of law enforcement services necessary to assure orderly conventions;

(8) To defray the cost of using convention bureau personnel to provide central housing and reservation services;

(9) To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(10) To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and

(11) To provide other similar convention-related facilities and services.

■ 26. Section 9008.53 is revised to read as follows:

§ 9008.53 Receipts and disbursements of municipal funds.

(a) *Receipt of goods and services provided by commercial vendors.* Municipal funds may accept goods or services from commercial vendors for convention uses under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

(b) *Receipt and use of donations to a municipal fund.* Businesses (including banks), labor organizations, and other organizations and individuals may donate funds or make in-kind donations to a municipal fund to pay for expenses listed in 11 CFR 9008.52(b).

■ 27. Section 9008.55 is added to read as follows:

§ 9008.55 Funding for Convention Committees, Host Committees and Municipal Funds.

(a) Convention committees, including any established pursuant to 11 CFR 9008.3(a)(2), are subject to 11 CFR 300.10, except that convention committees may accept in-kind donations from host committees and municipal funds provided that the in-kind donations are in accordance with the requirements of 11 CFR 9008.52 and 9008.53.

(b) Host committees and municipal funds are not ''agents'' of national committees of political parties or convention committees, unless they satisfy the prerequisites of 11 CFR 300.2(b)(1).

(c) Host committees and municipal funds are not ''directly or indirectly established, financed, maintained, or controlled'' by national committees of political parties or convention committees, unless they satisfy the prerequisites of 11 CFR 300.2(c).

(d) In accordance with 2 U.S.C. 441i(e)(4)(A), a person described in 11 CFR 300.60 may make a general solicitation of funds, without regard to source or amount limitation, for or on behalf of any host committee or municipal fund that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under such section) where such solicitation does not specify how the funds will or should be spent.

PART 9031—SCOPE

■ 28. The authority citation for part 9031 continues to read as follows:

Authority: 26 U.S.C. 9031 and 9039(b).

■ 29. Section 9003.1 is amended by removing the number ''116'' and adding in its place the number ''400'' in both instances in which ''116'' appears.

PART 9032—DEFINITIONS

■ 30. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

■ 31. Section 9032.9 is amended by revising paragraph (c) to read as follows:

§ 9032.9 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either prior to the date the individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

PART 9033—ELIGIBILITY FOR PAYMENTS

■ 32. Authority: The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

■ 33. In § 9033.1, paragraph (b)(10) is amended by removing the number ''116'' and adding in its place the number ''400''.

■ 34. Section 9033.11 is amended by adding new paragraph (b)(4) to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9034—ENTITLEMENTS

■ 35. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 36. Section 9034.4 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a)(3)(i);
■ c. Revising paragraph (a)(3)(ii);
■ d. Removing paragraph (a)(3)(iii);
■ e. Revising paragraph (a)(5);
■ f. Adding paragraph (a)(6); and
■ g. Revising paragraph (b)(3).

Revisions and additions read as follows:

§ 9034.4 Use of contributions and matching payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) * * *

(i) Winding down costs subject to the restrictions in 11 CFR 9034.11 shall be considered qualified campaign expenses.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under 11 CFR 9034.11. Each contribution that is dated after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

* * * * *

(5) *Monetary bonuses paid after the date of ineligibility and gifts.* Monetary bonuses paid after the date of ineligibility and gifts shall be considered qualified campaign expenses, provided that:

(i) All monetary bonuses paid after the date of ineligibility for committee employees and consultants in recognition of campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of ineligibility; and

(B) Are paid no later than thirty days after the date of ineligibility; and

(ii) Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000.

(6) *Expenses incurred by ineligible candidates attending national nominating conventions.* Expenses incurred by an ineligible candidate to attend, participate in, or conduct activities at a national nominating convention may be treated as qualified campaign expenses, but such convention-related expenses shall not exceed a total of $50,000.

(b) * * *

(3) *General election and post-ineligibility expenditures.* Except for winding down costs pursuant to paragraph (a)(3) of this section and certain convention expenses described in paragraph (a)(6) of this section, any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses. In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

* * * * *

■ 37. New §9034.10 is added to read as follows:

§ 9034.10 Pre-candidacy payments by multicandidate political committees deemed in-kind contributions and qualified campaign expenses; effect of reimbursement.

(a) A payment by a multicandidate political committee is an in-kind contribution to, and qualified campaign expense by, a Presidential candidate, even though made before the individual becomes a candidate under 11 CFR 100.3 and 9032.2, if—

(1) The expenditure is made on or after January 1 of the year immediately following the last Presidential election year;

(2) With respect to the goods or services involved, the candidate accepted or received them, requested or suggested their provision, was materially involved in the decision to provide them, or was involved in substantial discussions about their provision; and

(3) The goods or services are—

(i) Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;

(ii) Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate's home state and in or near the District of Columbia;

(iii) Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate's home state and in or near the District of Columbia; or

(iv) Expenses of individuals seeking to become delegates in the Presidential nomination process.

(b) Notwithstanding paragraph (a) of this section, if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure and a qualified campaign expense of the candidate.

■ 38. New section 9034.11 is added to read as follows:

§ 9034.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election, such as the costs of complying with the post election requirements of the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs are qualified campaign expenses.

(b) *Winding down limitation.* The total amount of winding down costs that may be paid for, in whole or part, with matching funds shall not exceed the lesser of:

(1) 10% of the overall expenditure limitation pursuant to 11 CFR 9035.1; or

(2) 10% of the total of:

(i) The candidate's expenditures subject to the overall expenditure limitation as of the candidate's date of ineligibility; plus

(ii) The candidate's expenses exempt from the expenditure limitations as of the candidate's date of ineligibility; except that

(iii) The winding down limitation shall be no less than $100,000.

(c) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any reasonable allocation method. An allocation method is reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than

one third of total winding down costs allocated to each committee. A candidate may demonstrate than an allocation method is reasonable even if either the primary or the general election committee is allocated less than one third of total winding down costs.

(d) *Primary winding down costs during the general election period.* A primary election candidate who does not run in the general election may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention. A primary election candidate who runs in the general election, regardless of whether the candidate receives public funds for the general election, must wait until 31 days after the general election before using any matching funds for winding down costs related to the primary election. No expenses incurred by a primary election candidate who runs in the general election prior to 31 days after the general election shall be considered primary winding down costs.

PART 9035—EXPENDITURE LIMITATIONS

■ 39. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

■ 40. Section 9035.1 is amended by;
■ a. Adding new paragraph (a)(3);
■ b. Adding new paragraph (a)(4);
■ c. Revising the paragraph heading in paragraph (c);
■ d. Revising paragraph (c)(1); and
■ e. Adding new paragraph (c)(3).

Additions and revisions read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) * * *

(3) In addition to expenditures made by a candidate or the candidate's authorized committee(s) using campaign funds, the Commission will attribute to the candidate's overall expenditure limitation and to the expenditure limitations of particular states under 11 CFR 110.8 the total amount of all:

(i) Coordinated expenditures under 11 CFR 109.20;

(ii) Coordinated communications under 11 CFR 109.21 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents, under 11 CFR 109.21(b);

(iii) Coordinated party expenditures, including party coordinated communications pursuant to 11 CFR 109.37 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents under 11 CFR 109.37(a)(3), and that exceed the coordinated party expenditure limitation for the Presidential general election at 11 CFR 109.32(a); and

(iv) Other in-kind contributions received or accepted by the candidate or the candidate's authorized committee(s) or agents.

(4) The amount of each in-kind contribution attributed to the expenditure limitations under this section is the usual and normal charge for the goods or services provided to the candidate or the candidate's authorized committee(s) as an in-kind contribution.

* * * * *

(c) *Compliance, fundraising and shortfall bridge loan exemptions.*

(1) A candidate may exclude from the overall expenditure limitation set forth in paragraph (a) of this section an amount equal to 15% of the overall expenditure limitation as exempt legal and accounting compliance costs under 11 CFR 100.146. In the case of a candidate who does not run in the general election, for purposes of the expenditure limitations set forth in this section, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. Candidates who continue to campaign or re-establish eligibility may not treat 100% of salary, overhead and computer expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign as exempt legal and accounting compliance expenses. For purposes of the expenditure limitations set forth in this section, candidates who run in the general election, regardless of whether they receive public funds, must wait until 31 days after the general election before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * * *

(3) If any matching funds to which the candidate is entitled are not paid to the candidate, or are paid after the date on which payment is due, the candidate may exclude from the overall expenditure limitation in paragraph (a) of this section the amount of all interest charges that accrued during the shortfall period on all loans obtained by the candidate or authorized committee that are guaranteed or secured with matching funds, provided the candidate submits documentation as to the amount of all interest charges on such loans. The shortfall period begins on the first regularly scheduled payment date on which the candidate does not receive the entire amount of matching funds and ends on the payment date when the candidate receives the previously certified matching funds or the date on which the Commission revises the amount previously certified to eliminate the entitlement to the previously certified matching funds.

* * * * *

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

■ 41. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

■ 42. Section 9036.1 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(1) * * *

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in an election cycle;

* * * * *

■ 43. Section 9036.2 is amended by revising paragraph (b)(1)(v) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the election cycle, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

■ 44. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

■ 45. Section 9038.2 is amended by revising paragraph (b)(4) to read as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(4) The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from an investment or other use of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, shall be paid to the Treasury.

* * * * *

Dated: July 31, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–19893 Filed 8–7–03; 8:45 am]

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Federal Register

Friday,
August 8, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2003–04 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 18, 2003.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240 or fax comments to (703) 358–2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, (318) 201–0400, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the May 6, 2003, **Federal Register** (68 FR 24324), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2003–04 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the May 6, 2003, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to

accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Habitat conditions for breeding waterfowl have improved over last year in the prairie survey areas, except for eastern South Dakota. Most prairie areas had warm temperatures and plenty of rain this spring. Two areas of dramatic improvement over the past several years were south-central Alberta and southern Saskatchewan, where conditions went from poor to good after much-needed precipitation relieved several years of drought. Other areas in the prairies also improved in condition over 2002, but to a lesser extent. However, years of dry conditions in parts of the United States and Canadian prairies, combined with agricultural practices, have lessened the quality and quantity of residual nesting cover and over-water nest sites in many regions. This could potentially limit production for both dabbling and diving ducks, if the warm spring temperatures and good moisture of 2003 does not result in rapid growth of new cover. Eastern South Dakota was the one area of the prairies where wetland habitat conditions were generally worse than last year, mostly due to low soil moisture, little winter precipitation, and no significant rainfall in April. By the time this region received several inches of rain in May, most birds probably had overflown the area to wetter conditions in other regions to the north and west.

In the northwestern survey areas, habitat was in generally good condition and most areas had normal water levels. The exception was northern Manitoba, where low water levels in small streams and beaver ponds resulted in overall breeding habitat conditions that were only fair. Warm spring temperatures arrived much earlier this year than the exceptionally late spring last year. However, a cold snap in early May could have hurt early-nesting species such as mallards and pintails, particularly in the northern Northwest Territories.

Habitat conditions in the eastern survey area ranged from excellent to fair. In the southern and western part of this survey area, water and nesting cover were plentiful and temperatures were mild this spring. Habitat quality decreased to the north, especially in northern and western Quebec, where many shallow marshes and bogs were either completely dry or reduced to mudflats. Beaver-pond habitat was also noticeably less common than normal. To the east in Maine and most of the Maritime provinces, conditions were excellent, with adequate water, vegetation, and warm spring temperatures.

Status of Teal

Breeding population estimates for blue-winged teal from surveyed areas total 5.5 million blue-winged teal, which is above the 4.7 million needed to trigger the 16-day teal season in the Central and Mississippi Flyways, and the 3.3 million needed to trigger the 9-day teal season in the Atlantic Flyway.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2003, uncorrected for visibility, was 316,676 cranes. The most recent photo-corrected 3-year average (for 2000–02) was 375,875, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2002–03. About 8,800 hunters participated in these seasons, which was 10 percent higher than the number participating in the previous year. An estimated 16,650 cranes were harvested in the Central Flyway during 2001–02 seasons, which was 11% higher than the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 11,650 cranes for the 2002–03 period. The total North American sport harvest, including crippling losses, was estimated at 31,830, which is similar to the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2002 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 18,803, which was 12% higher than the previous year's estimate of 16,559. Limited special seasons were held during 2002 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a harvest of 639 cranes, which is 29% below the previous year's record high harvest of 898 cranes.

Woodcock

Singing-Ground and Wing-Collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-Ground Survey data for 2003 indicate that the numbers of displaying woodcock in the Eastern and Central Regions were unchanged from 2002 ($P>0.10$); although the point estimates of the trends were higher. Trends from the Singing-Ground Survey during 1993–2003 were –1.3 and –1.6 percent change per year for the Eastern and Central regions, respectively ($P<0.05$). There were long-term (1968–03) declines ($P<0.01$) of 2.3 percent per year in the Eastern Region and 1.8 percent per year in the Central Region.

The 2002 recruitment index for the Eastern Region (1.4 immatures per adult female) was similar to the 2001 index, but was 18 percent below the long-term average. The recruitment index for the Central Region (1.6 immatures per adult female) was 17 percent higher than the 2001 index of 1.3 immatures per female, and was similar to the long-term average. The index of daily hunting success in the Eastern Region increased slightly from 1.8 woodcock per successful hunt in 2001 to 1.9 in 2002, but seasonal hunting success declined from 6.9 woodcock per successful hunter in 2001 to 6.6 in 2002. In the Central Region, the daily success index was 2.1 woodcock per successful hunt in both 2001 and 2002; but seasonal hunting success increased from 10.0 woodcock per successful hunter in 2001 to 11.0 in 2002.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2002, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase over the most recent 10

years. Call-Count Surveys conducted in Washington showed a significant increase during 1998–02 and a nonsignificant increase during 1975–02. According to Harvest Information Program (HIP) surveys, approximately 9,600 pigeons were taken during the 2002–03 season. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short-or long-term periods. An estimated 3,700 birds were taken in 2002–03.

Analyses of Mourning Dove Call-Count Survey data over the most recent 10 years indicated no trend in doves heard in any Management Unit. Between 1966 and 2003, all 3 Units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit while no trends were found in the Central and Western Units. Over 38 years, no trend was found for doves seen in the Eastern and Central Units while a decline was indicated for the Western Unit. HIP surveys indicated that about 22,700,000 mourning doves were bagged nationwide during the 2002–03 season.

In Arizona, the white-winged dove population has shown a significant decline between 1962 and 2003. However, the number of whitewings has been fairly stable since the 1970s and, over the most recent 10 years, there is no significant trend indicated. The 2002 harvest estimate from the HIP survey was 102,700. In Texas, the range and density of white-winged doves continue to expand. In 2003, the whitewing population in Texas was estimated to be 2,525,000 birds, an increase of 8.4 percent from 2002. A more inclusive count in San Antonio documented more than 1.3 million birds. HIP surveys indicated a harvest of 943,000 whitewings during the 2002–03 season. The expansion of whitewings northward and eastward from Texas has led to reports of nesting in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Whitewings are believed to be expanding northward from Florida and have been seen in Georgia, the Carolinas, and Pennsylvania.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The 2003 survey averaged 0.95 birds per stop, a 2 percent decrease over the 2002 survey. During the special 4-day whitewing season, about 2,700 whitetips were bagged, according to State harvest-survey estimates.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2003–04 hunting season, we received requests from 24 Tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a mid-August 2003 **Federal Register** that will include tribal regulations for the early-hunting season.

The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. A final rule will also be published in a September 2003 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around September 24 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as ''Same as permitted in Pacific Flyway States under final Federal frameworks,'' and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 17, 2003 (68 FR 42546); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 24 Tribes that have submitted proposals that meet the established criteria and an additional 4 Tribes from whom we expect to receive proposals are shown below.

(a) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Non-tribal Hunters)

The Bois Forte Band of Chippewa is located in northern Minnesota, as specified in **Federal Register** 66, No., 83. Bois Forte is a 103,000-acre land area, home to 800 Band members. The reservation includes Nett Lake, a 7,400-acre wild rice lake.

In their 2003–04 proposal, dated June 14, 2003, Bois Forte requested the authority to establish a waterfowl season on their reservation. The season would be the same as that established by the State of Minnesota, except that shooting hours on opening day would be one-half hour before sunrise to sunset. Harvest under their proposal would not alter possession limits or species allowances already in place in Minnesota. Bois Forte requests these hours on opening day and for every hunting day for the remainder of the State's official, established season.

Bag limits for non-tribal hunters will not be changed from current, State of Minnesota established levels. Bois Forte requires non-tribal persons hunting on Nett Lake on the first day of the season to complete a survey upon completion of the day's hunting requesting: (1) Name and contact information; (2) hunting permit number (State and tribal); (3) number of hours hunted; (4) location of hunting site; (5) tribal guide name; (6) number and species of waterfowl harvested in possession; and (7) number and species of waterfowl shot but not recovered. Bois Forte will collect the results and compare to previous seasons' data.

Harvest information from the 2002–03 migratory bird season included harvest of 1,000 ducks. Of these 1,000 taken, 700 were ring-neck ducks, 150 were blue/green-winged teal, and 150 were mallards. They had 216 hunters, similar to levels in the past.

The Band's Conservation Department regulates non-tribal harvest limits under the following regulations: (1) Non-tribal hunters must be accompanied at all times by a Band Member guide; (2) non-tribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) non-tribal hunters and Band Members must have only Service-approved non-toxic shot in possession at all times; (4) non-tribal hunters must conform to possession limits established

and regulated by the State of Minnesota and the Bois Forte Band.

We propose to approve the Bois Forte Band of Chippewa regulations for the 2003–04 hunting season.

(b) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2003–04 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2003. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 15, 2003, and close December 29, 2003. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would likely open October 11, 2003, and run until January 25, 2004. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit would be twice the daily bag limit. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 18, 2003, through January 25, 2004. The daily bag limit for geese would be four, but could include no more than three light geese or three dark geese. The possession limit would be six light geese and six dark geese.

In 1996, the Tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2003–04 hunting season.

(c) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other Federally-approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2003–04 hunting season.

(d) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In their 2003 proposal, the Tribe requested a duck and merganser season of October 4 to December 16, 2003, with a daily bag limit of six ducks, including no more that five mallards (only two of which may be hens), two redheads, two wood ducks, and three scaup. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. The pintail season would run from October 4 to December 2, 2003, with a daily bag limit of one pintail.

For Canada geese, the Tribe proposes an October 18, 2003, to January 20, 2004, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 27 to December 21, 2003, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 27, 2003, to January 1, 2004, season with a daily bag limit of 20.

Similar to the last several years, the Tribe also requests a sandhill crane season from September 13 to October 19, 2003, with a daily bag limit of three. The Tribe proposes a mourning dove season from September 1 to October 30, 2003, with a daily bag limit of 15.

In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such, the Tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

We propose to approve the Tribe's requested seasons. We also remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(e) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 29, 2003, proposal

covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2003–04 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 20 to December 1, 2003, season on ducks, mergansers, coots, and moorhens, and a September 2 to December 1, 2003, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 2 to December 1, 2003, season. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(f) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2003–04 season, the Tribe requests that the tribal member duck season run from September 15, 2003, through January 15, 2004. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1 through November 30, 2003, and a January 1 through February 8, 2004, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 20 through November 30, 2003, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 to November 14, 2003, season. The daily bag limit will not exceed five birds. For mourning doves, snipe and rails, the Tribe proposes a September 1 to November 14, 2003, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2002–03 hunting season indicated that approximately 34 tribal hunters harvested an estimated 200 ducks and 30 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians' requested 2003–04 special migratory bird hunting regulations.

(g) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but point out that the U.S. Government has recognized the Indian hunting rights decided in the Lac Courte Oreilles v. State of Wisconsin (Voigt) case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

The GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2003–04 seasons on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for

the 1836 Treaty area). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 2002–03 season.

Results of 1987–98 hunter surveys on off-reservation tribal duck harvest in the Wisconsin/Michigan entire ceded territory ranged from 1,022 to 2,374 with an average of 1,422. Estimated goose harvest has ranged from 72 to 586, with an average of 310. Harvest from 2001 was estimated at 1,014 ducks, 81 geese, and 146 coots. Under the proposed regulations, harvest is expected to remain within these ranges. Tribal harvest in the Minnesota ceded territory is anticipated to be much smaller than in the Wisconsin/Michigan area since waterfowl hunting has been limited to 10 individuals thus far. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, harvest is expected to be negligible.

We believe that regulations advanced by the GLIFWC for the 2003–04 hunting season are biologically acceptable, and we recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band's duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 2003–04 waterfowl hunting season regulations are as follows:

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas

Season Dates: Begin September 1 and end December 1, 2003. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Begin September 2 and end December 1, 2003.

Daily Bag Limit: Five woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories

Season Dates: Begin September 2 and end October 30, 2003.

Daily Bag Limit: 15 mourning dove.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the Voigt and Mille Lacs Band v. State of Minnesota cases. The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel state regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05 (2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29804, June 3, 1999. This language is also included in Appendix 1.

5. The shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(h) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and

nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2003–04 waterfowl season beginning with the earliest possible opening date in the Pacific Flyway States and a closing date of November 30, 2003. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a season on Canada geese with a two-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2002–03 season, estimated duck harvest was 216, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 3 percent of the total harvest in 2002. The estimated harvest of geese was 13 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2003–04 waterfowl harvest would be around 250–700 ducks and 20–30 geese.

We propose to approve the Tribe's requested 2003–04 hunting seasons.

(i) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The nontribal member seasons described below pertain to a 176-acre waterfowl management unit. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2003–04 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. For nontribal members, the Tribe requests that the season for ducks begin September 20, 2003, and end January 26, 2004. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 4 to September 15, 2003, and from October 1, 2003, to January 26, 2004. Total number of days would not exceed 107. Nontribal members should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2002–03 nontribal harvest of 55 ducks and 0 geese. Under the proposal, the Tribe expects harvest to be similar to last year and less than 30 geese and 100 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of non-toxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2003, through January 26, 2004. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2002–03 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. For the 2003–04 season, outside Federal frameworks for ducks in the Pacific Flyway under the ''moderate'' and ''liberal'' regulatory alternatives are September 20, 2003, through January 26, 2004. For geese, frameworks for special early Canada goose seasons are September 1 through September 15, 2003, while regular seasons frameworks are September 28, 2003, through January 26, 2004. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(j) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2003–04 season, we have not yet heard from the Tribe regarding this season's proposal. Based on last year, we assume the Tribe would request proposed season dates of October 1, 2003, through January 28, 2004. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2003–04 special migratory bird hunting regulations upon receipt of their proposal and confirmation that the Tribe would like to have a special season.

(k) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2003–04 season, the Tribe requests a duck season starting on September 13 and ending December 31, 2003. They request a goose season to

run from September 1 through December 31, 2003. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 1,000–2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2003–04 special migratory bird hunting regulations.

(l) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2003–04 season, the Little River Band of Ottawa Indians proposes duck, merganser, coot, and common moorhen seasons from September 29 through December 5, 2003. A daily bag limit of eight ducks would include no more than one pintail, one canvasback, one black duck, two wood ducks, two redheads, three scaup, and five mallards (only one of which may be a hen). The daily bag limit for mergansers would be five, of which only one could be a hooded merganser. Possession limits for mergansers is 10, only 2 of which may be hooded mergansers. The daily bag limit for coots and common moorhens would be 12. Possession limits would be twice the daily bag limit.

For Canada geese, white-fronted geese, snow geese, Ross geese, and brant, the Tribe proposes a September 1 through November 30, 2003, season. Daily bag limits would be 5 Canada geese and a combination of 10 of all other species. For Canada geese only, the Tribe proposes a January 1, 2004, through February 7, 2004, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, and rails, the Tribe proposes a September 1 to November 14, 2003, season. The daily bag limit would be 10 common snipe, 5 woodcock, and 10 rails. Possession limits for all species would be twice the daily bag limit. For mourning dove, the Tribe proposes a September 15 to November 14, 2003, season. The daily bag limit would be 10 and possession limit of 20.

The Tribe proposes to monitor harvest through mail surveys. General Conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2003–04 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians' requested 2003–04 special migratory bird hunting regulations.

(m) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2003–04 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other Tribes in the 1836 treaty area. The tribal member duck season would run from September 15, 2003, through January 20, 2004. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 2 redheads, and 6 mallards (only 3 of which may be hens). For Canada geese, the Tribe proposes a September 1, 2003, through November 30, 2003, and January 1, 2004, through February 7, 2004, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 1 through November 30, 2003, season. The daily bag limit for Canada geese would be 5 birds, and for snow geese, brant, and white-fronted geese, 10 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2003, to November 14, 2003, season. The daily bag limit will not exceed five birds. For snipe, mourning doves, and sora rail, the Tribe proposes a September 1 to November 14, 2003, season. The daily bag limit will not exceed 10 birds per species. The possession limit will not exceed two days bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2003–04 special migratory bird hunting regulations.

(n) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 2003–04 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2003–04 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the ''liberal''

regulatory alternative in the High Plains Management Unit for this season. The Tribe's proposed season would run from October 4, 2003, through January 8, 2004. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, and one mottled duck. The canvasback season for nontribal members is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 27–28, 2003.

The Tribe's proposed nontribal member Canada goose season would run from October 18, 2003, through January 20, 2004, with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 18, 2003, through January 11, 2004, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 18, 2003, through January 17, 2004, and February 26 through March 10, 2004. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from October 4, 2003, through March 9, 2004. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood ducks, three scaup, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 27–28, 2003.

The Tribe's proposed Canada goose season for tribal members would run from October 18, 2003, through March 9, 2004, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 18, 2003, through March 9, 2004, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 18, 2003, through March 9, 2004. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2002–03 season, hunters harvested an estimated 1,785 geese and 660 ducks. In the 2002–03 season, duck harvest species composition was primarily mallard (60 percent), green-winged teal (19 percent), gadwall (10 percent), blue-winged teal (7 percent), and wood duck, scaup, pintail, and wigeon (4 percent collectively). Goose harvest species composition in 2002 at Mni Sho Sho was approximately 86 percent Canada geese, 8 percent snow geese, and 6 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 96 percent Canada geese, 3 percent snow geese, and 1 percent white-fronted geese. However, typical harvest is 100 percent Canada geese with less than 1 percent snow geese.

The Tribe anticipates a duck harvest similar to the 9-year average (403) and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the Tribe's requested regulations for the Lower Brule Reservation.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 15, 2003, to January 13, 2004. The daily bag limit is seven ducks including no more than one canvasback and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. For geese, the Tribe proposes the season open on September 15, 2003, and close January 13, 2004. The daily bag limit for geese is four. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese. For band-tailed pigeons, the Tribe proposes the season open September 1, 2003, and close October 31, 2003. The daily bag limit for band-tailed pigeons is two. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The Tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate at this time. The Tribe expects fewer than 70 ducks and 20 geese are expected to be harvested during the 2003–04 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribe's requested 2003–04 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

The Tribe requests special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2003–04 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30, 2003, with daily bag limits

of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe anticipates a total harvest of less than 100 mourning doves, 20 band-tailed pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese for the 2003–04 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's request for these special regulations for the 2003–04 migratory bird hunting seasons.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a May 13, 2003, letter, and a June 26, 2003 supplemental letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general ''outside dates'' as being September 27 through December 7, 2003, with a closed segment of November 22 through 30. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), five wood ducks, one redhead, two pintails, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2003, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The Tribe will close the season November 22 to 30, 2003. If a quota of 150 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 13 and November 16, 2003, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 16, 2003, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset.

Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells. Tribal member shooting hours will be from one-half hour before sunset to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam Tribes, have cooperated to establish special regulations for migratory bird hunting. The four Tribes have reservations located on the Olympic Peninsula in Washington. All four Tribes have successfully administered tribal hunting regulations since 1985, and each Tribe has a comprehensive hunting ordinance.

For the 2003–04 season, the Tribe requests seasons for ducks, geese, brant, coots, snipe, band-tailed pigeons, and mourning doves. For ducks, coots, geese, and snipe, the season would run from September 15, 2003, to March 10, 2004, with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), and 8 snipe. The duck daily bag limit would include mergansers and could include no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. The goose daily bag limit is to include no more than three light geese. The season is closed on Aleutian Canada geese. For brant, the season would run from November 1, 2003, to March 10, 2004. The daily bag limit for brant would be two. All possession limits would be twice the daily bag limit. For band-tailed pigeons and mourning doves, the season would start September 1, 2003, and end March 10, 2004. The band-tailed pigeon daily bag limit would be 2, with a possession limit of 4, and the mourning dove daily bag limit would be 10, possession limit of 20.

The Tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest in 2002–03 under similar regulations was approximately 150 ducks, 20 geese, and 25 coots.

We propose to approve the Point No Point Treaty Tribe's 2003–04 regulations.

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2003–04 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2003–04 hunting season, the Shoshone-Bannock Tribes

requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States, under final Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 4, 2003, and a closing date of January 11, 2004. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 2003, and a closing date of January 4, 2004. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 2003, and a closing date of January 11, 2004.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2003–04 hunting season.

(t) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2003–04 season, the Tribe requests to establish duck and coot seasons that would run from September 15, 2003, through January 15, 2004. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2003, and end on January 15, 2004. The daily bag limit for snipe is eight.

For geese, the Tribe proposes establishing a season that would run from September 15, 2003, through January 15, 2004. The daily bag limit for geese is four and could include only two snow geese. The season on Aleutian and cackling Canada geese is closed. For brant, the Tribe proposes to establish a September 15 to December 31, 2003, season with a daily bag limit of two. The Tribe also proposes a September 1 to December 31, 2003, season for band-tailed pigeons with a daily bag limit of five.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset, and steel shot would be required for migratory bird hunting. Further, the Tribe requires that all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the Tribe reported no harvest of any species. Tribal regulations are enforced by the Tribe's Law Enforcement Department.

We propose to approve the Squaxin Island Tribe's requested 2003–04 special migratory bird hunting regulations.

(u) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, Port Susan to the border of the Tulalip Tribe's Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers, sea ducks, and coots), goose, and snipe seasons run from October 1, 2003, to January 31, 2004. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is six. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a non-toxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(v) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a Federally recognized Indian Tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2003–04 season, the Tribe requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal

regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2004. The Swinomish manage harvest by a report card permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribe's requested 2003–04 special migratory bird hunting regulations.

(w) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

The Tulalip Tribes proposed tribal and nontribal hunting regulations for the 2003–04 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 15, 2003, through February 29, 2004. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members are proposed to be allowed to hunt from September 15, 2003, through February 29, 2004. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribe's request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(x) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2003–04 duck season, the Tribe requests a season of November 1, 2003, and ending February 8, 2004. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from November 1, 2003, to February 8, 2004, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are seven and five, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2003, with a daily bag limit of 12 and possession limit of 20.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the Tribe closely monitor harvest of this special migratory bird hunting season.

(y) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally-recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2003–04 season, the Tribe proposes a duck season of November 1, 2003, to February 28, 2004. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season for harlequins would be closed. The Tribe proposes a teal (green-winged and blue) season of October 18, 2003, to January 31, 2004. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 18, 2003, and February 28, 2004, with a daily bag limit

of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the Tribe requests a season between September 13 to September 27, 2003, and November 1, 2003, through February 28, 2004, with a daily bag limit of 5 Canada geese during the first period and 3 Canada geese during the second period. They propose a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 18 and November 29, 2003, with a daily bag limit of three.

The Tribe currently has 22 registered tribal hunters and estimates harvest to be no more than 40 geese, 50 mallards, 50 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Hunters will be required to register with the HIP program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head.

(z) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2003–04 migratory bird hunting season, the White Earth Band of Ojibwe request a duck and merganser season to start September 13 and end December 14, 2003. For ducks, they request a daily bag limit of 10 including no more than 2 mallards and 2 canvasback. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers. For geese, the Tribe proposes a September 1 to December 14, 2003, season with a daily bag limit of five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 7 to December 31, 2003, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's requested 2003–04 special migratory bird hunting regulations for this year.

(aa) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2003–04 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2003–04 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 11, 2003, and a closing date of January 25, 2004. The Tribe proposes a separate pintail season, with an opening date of October 11, 2003, and a closing date of December 10, 2003. The season on canvasback is closed. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail (when open), and seven mallards (including no more than two hen mallards). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate.

For geese, the Tribe is proposing a season from October 11, 2003, through January 25, 2004. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 3 through September 17, 2003, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the Tribe for the 2003–04 season.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 28, 2003, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2003–04 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 2003, and running for the maximum amount of days allowed under the final Federal frameworks. The Tribe indicated that if the Service decided to close the canvasback season, the Tribe would close theirs. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (if open), 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 29, 2003, and closing January 31, 2004. The daily bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit.

For white geese, the proposed hunting season would start October 29, 2003, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the maximum as those allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory

bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2002–03 hunting season, the Tribe reported that 65 nontribal hunters took 350 Canada geese, 25 light geese, and 75 ducks. One hundred and twenty-two tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2003–04 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust appropriately their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified in **DATES** is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.** You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program.

Endangered Species Act Consideration

Prior to issuance of the 2003–04 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading *Regulatory Flexibility Act.* Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 2003. The Analysis documented the significant beneficial economic effect on a substantial number of small entities.

The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $470 million and $1.2 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon-to-be-completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2003, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: July 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 74/P.L. 108–67

To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68

To amend the PROTECT Act to clarify certain volunteer liability. (Aug. 1, 2003; 117 Stat. 883)

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